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1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

3 . . . . .  
4 BARBARA E. VARNER, . CIVIL ACTION  
5 Plaintiff .  
6 vs. . NO: 1:CV 01-0725  
7 COMMONWEALTH OF PENNSYLVANIA, .  
8 NINTH JUDICIAL DISTRICT, .  
9 CUMBERLAND COUNTY; .  
10 CUMBERLAND COUNTY; S. GARETH .  
11 GRAHAM, individually; and .  
12 JOSEPH OSENKARSKI, .  
13 individually, .  
14 Defendants .  
15 . . . . .

16  
17  
18 Deposition of: DAVID W. DeLUCE  
19  
20 Taken by : Plaintiff  
21  
22 Date : October 24, 2003, 10:42 a.m.  
23  
24 Place : 5001 Louise Drive  
25 Mechanicsburg, Pennsylvania  
Before : Ann M. Wetmore  
Reporter - Notary Public

1 APPEARANCES:

2 LAW OFFICES OF DEBRA K. WALLET  
By: DEBRA K. WALLET, ESQ.

3  
4 For - Plaintiff

5 ADMINISTRATIVE OFFICE OF  
6 PENNSYLVANIA COURTS  
SUPREME COURT OF PENNSYLVANIA  
By: A. TAYLOR WILLIAMS, ESQ.

7 For - Defendant Ninth Judicial District

8 THOMAS, THOMAS & HAER  
By: JAMES K. THOMAS, II, ESQ.  
9 PAUL J. DELLASEGA, ESQ.

10 For - Defendant Cumberland County

11 MONTGOMERY, McCracken, Walker & Rhoads, LLP  
By: DAVID J. MacMAIN, ESQ.

12 For - Defendant Gary Graham

13 SWEENEY & SHEEHAN, P.C.  
14 By: PAUL LANCASTER ADAMS, ESQ.

15 For - Defendant Joseph Osenkowski

16 ALSO PRESENT:

17 PETER ZANGARDI, ST. PAUL INSURANCE CO.  
BARBARA VARNER  
18 GARY GRAHAM  
19 JOSEPH OSENKARSKI

20

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WITNESS

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3 DAVID DeLUCE

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10

11 EXHIBITS

12	DeLuce Deposition Exhibit_Number	Page
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13	1	Handritten notes authored by David W. DeLuce and fax cover Sheet dated October 22, 2003	4
14	2	Confidential Attorney Impressions Memorandum to HAJ from DWD, dated April 30, 1997	4
15	3	Confidential Attorney Impressions Memorandum to HAJ from DWD, dated June 4, 1997	4
16	4	Letter to Daniel Hartnett from Horace Johnson, dated June 26, 1997	11
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1 STIPULATION

2 It is hereby stipulated by and between  
3 counsel for the respective parties that sealing,  
4 certification and filing are hereby waived; and  
5 all objections except as to the form of the  
6 question are reserved to the time of trial.

7 (DeLuce Deposition Exhibits #1, #2 and #3  
8 marked for identification)

9 DAVID W. DeLUCE, called as a witness, being  
10 duly sworn, testified as follows:

11 EXAMINATION

12 BY MS. WALLET:

13 Q. Good morning, Mr. DeLuce, my name is Debra Wallet.  
14 I'm here representing Barbara Varner in an action  
15 that has been brought against the county, the  
16 court and two individuals. Before I begin my  
17 questioning of you, I'd like to get some matters  
18 on the record if I may.

19 I've had the court reporter mark for me as  
20 DeLuce Deposition Exhibit Number 1 a multiple-page  
21 document. The first page is an October 22, 2003,  
22 fax cover sheet memo/letter from Paul Dellasega to  
23 counsel. "Please find enclosed a copy of notes  
24 offered by David W. DeLuce, Esquire, which Judge  
25 Kane ordered be produced." And attached to that

Exam./Wallet - DeLuce

5

1 document are I believe some -- it's hard to  
2 tell -- 37 pages perhaps. I can't tell because  
3 some of this came over the fax twice so it may be  
4 that I have some additional things two times.

5 Before we move off DeLuce Deposition Exhibit  
6 Number 1, I'd like counsel for the County to  
7 examine this document and tell me whether it  
8 accurately reflects what you have in your file as  
9 far as the notes for David DeLuce; and, second,  
10 why it appears that there are some notes contained  
11 in that package that were identified previously as  
12 notes from Judge Hoffer.

13 MR. THOMAS: Jim Thomas on behalf of the  
14 County and I will respond. And actually, Deb,  
15 before I respond to your request in that regard,  
16 let me indicate for the record that we are  
17 producing Mr. DeLuce here today for deposition  
18 pursuant to Judge Kane's order on your motion to  
19 compel production of documents and the deposition  
20 of Dave DeLuce, which memorandum and order was  
21 dated September 25, 2003.

22 While we've read that opinion and order and  
23 have produced him, perhaps out of a sense of  
24 excess caution, I'd like you to agree that we have  
25 a continuing objection. We continue to believe,

Exam./Wallet - DeLuce

6

1 with all due respect, that Judge Kane is incorrect  
2 in her ruling in this matter. I'd like your  
3 agreement that we have a continuing objection to  
4 any and all questions that are asked today on the  
5 basis that we oppose Mr. DeLuce and in general but  
6 not exclusively on the basis of attorney client  
7 privilege and attorney work product. Can we have  
8 that agreement?

9 MS. WALLET: I will be happy to agree so long  
10 as you state specifically the nature of your  
11 objections today.

12 MR. THOMAS: Well, the nature of our  
13 objections is that Mr. DeLuce in general I would  
14 rely on the briefing which was done, but in  
15 general Mr. DeLuce was hired as an attorney,  
16 worked as an attorney on behalf of the County to  
17 gather information and facts and made certain  
18 recommendations and rendered legal opinions  
19 included in those recommendations to the County.

20 We believe that much of his communication was  
21 entitled to be protected because it was  
22 communications to and on behalf of a client. We  
23 believe much of what you will make inquiry into  
24 today was, in fact, attorney work product. That's  
25 the general nature of the objection.

Exam./Wallet - DeLuce

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1 MS. WALLET: So, you are raising today as a  
2 continuing objection two bases, attorney client  
3 privilege and attorney work product.

4 MR. THOMAS: Yes. And I assume we will have  
5 the usual stipulations with respect to other  
6 objections?

7 MS. WALLET: And that being that everything  
8 say for the objection as to the form of the  
9 question will be preserved until later?

10 MR. THOMAS: Correct. Do we have such an  
11 agreement?

12 MS. WALLET: We certainly have an agreement  
13 that all objections except as to the form of the  
14 question will be preserved. We have an agreement  
15 that you continue to believe that all of the  
16 testimony of Mr. DeLuce is subject to attorney  
17 client privilege and attorney work product, that  
18 and that alone.

19 MR. THOMAS: And you agree that I don't have  
20 to object to every question, that we will have a  
21 standing objection to the questions and inquiry  
22 today on that basis. Fair?

23 MS. WALLET: That's correct.

24 MR. THOMAS: All right. With respect to your  
25 inquiry with respect to what has been marked as

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1 DeLuce Number 1, these do represent the notes  
2 prepared by Mr. DeLuce as part of his  
3 investigation. They also include notes that were  
4 apparently prepared by Judge Hoffer and out of a  
5 sense of being complete we have produced both for  
6 you. Certainly this witness can identify for you  
7 today those notes which are in his handwriting and  
8 those which are not.

9 MS. WALLET: Do you believe that the package  
10 that we've marked as Deposition Exhibit Number 1  
11 is a complete package of all of the notes that  
12 exist, were in the care and custody of David  
13 DeLuce prior to being turned over to your office?

14 MR. THOMAS: We do with the exception of  
15 Judge Hoffer's notes. I don't know that the notes  
16 of Judge Hoffer were in Mr. DeLuce's possession.  
17 In fact, I believe they were not.

18 MS. WALLET: Okay.

19 MR. THOMAS: Okay.

20 MS. WALLET: Now we've marked as Deposition  
21 Exhibit Number 2 what has been produced by your  
22 office as being the investigative report of David  
23 W. DeLuce. I would like you to look at this  
24 package and tell me whether you believe this to be  
25 the report prepared by Mr. DeLuce and tell me



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1           whether or not this is some draft or a version,  
2           what the nature of this report is.

3           MR. THOMAS: This is a report that contains a  
4           date of April 30, 1997. The document which has  
5           been referred to the Court as the DeLuce report  
6           was an evolutionary document. This investigation  
7           took a substantial amount of time. It involved  
8           the interview of numerous witnesses, significant  
9           legal research and compilation of the facts  
10          compares to the law, in addition to certain  
11          recommendations or impressions with respect to Mr.  
12          DeLuce.

13          The document evolved over time as I noted.  
14          This is a version which I would note while  
15          containing a date of April 30, a close review will  
16          reflect it was obviously not prepared on April 30  
17          because it makes reference to certain events that  
18          occurred in May within the context of the report.  
19          This was the report that was in our possession and  
20          was subject of the motion practice before Judge  
21          Kane and is the one that was produced.

22          As part of the preparation of Mr. DeLuce for  
23          this deposition yesterday, because of our  
24          discussions -- and let me add was the report in  
25          the possession of Mr. DeLuce and that's the reason

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10

1 it was produced. As part of deposition  
2 preparation yesterday, I perhaps out of a sense of  
3 caution, there were certain things that I'm  
4 obviously not going to reveal here today that led  
5 me to believe there may be another version, later  
6 version of this evolving document. As a result, I  
7 called Taylor, counsel for the Court, asked her to  
8 look at the copy of this report that was contained  
9 in her files which would have been obtained from  
10 the Court. I at that time determined that there  
11 was, in fact, a later report I believe dated June  
12 7.

13 MS. WILLIAMS: 4.

14 MR. THOMAS: June 4. That report was then  
15 produced for you yesterday by Taylor prior to the  
16 commencement of this deposition.

17 MS. WALLET: Mr. Thomas, is what has been  
18 marked as Deposition Number 2 what was produced to  
19 Judge Kane as a result of your order that you  
20 produced these documents in camera?

21 MR. THOMAS: It was.

22 MS. WALLET: And did you produce what has  
23 been marked as Deposition Exhibit 1 to Judge Kane  
24 in camera?

25 MR. THOMAS: It was. Well, let me put a

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1       caveat on that. I'm not certain at this moment  
2       without comparing them page by page whether the  
3       documents that were produced for Judge Kane  
4       included or excluded the notes that are Judge  
5       Hoffer's notes, that appear to be Judge Hoffer's  
6       notes.

7               MS. WALLET: Did you produce for Judge Kane  
8       in camera other than Deposition 1 or Deposition 2?

9               MR. THOMAS: We did produce for the judge the  
10      letter which has generally been referred to as the  
11      Johnson letter to the County also.

12              MS. WALLET: Let the record show that I'll  
13      hand to Mr. Thomas a letter dated June 26, 1997,  
14      from Horace A. Johnson to Daniel J. Hartnett.  
15      Would that be the letter to which you just  
16      referred?

17              MR. THOMAS: It appears to be.

18              MS. WALLET: And did it include the  
19      documents, four pages attached to this letter?

20              MR. THOMAS: Yes, I believe so.

21              MS. WALLET: Let's mark that for  
22      identification as Deposition Exhibit Number 4.

23                      (DeLuce Deposition Exhibit #4 marked for  
24      identification)

25              MS. WALLET: So, if I understand correctly,

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1 Deposition Exhibits 1, 2 and 4 were produced to  
2 Judge Kane for her examination in camera?

3 MR. THOMAS: Give me the numbers again.

4 MS. WALLET: 1, 2 and 4.

5 MR. THOMAS: Correct.

6 MS. WALLET: To the best of your knowledge,  
7 was anything else produced for the judge?

8 MR. THOMAS: No.

9 MS. WALLET: And I understand your  
10 clarification with regard to Deposition Exhibit 1,  
11 you are not certain whether it included the Hoffer  
12 notes as well?

13 MR. THOMAS: That's correct.

14 MS. WALLET: Now let me hand you what we've  
15 marked as Deposition Exhibit 3. This is the one  
16 that was received by me by fax late yesterday  
17 afternoon.

18 MR. THOMAS: This is the document I made  
19 reference to we learned of its existence, it was  
20 not contained in Mr. DeLuce's file, we learned of  
21 its existence late yesterday and it was produced  
22 following the deposition preparation to all  
23 counsel.

24 MS. WALLET: To the best of your knowledge,  
25 have you produced for me in response to the

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1 judge's order all of the investigative documents  
2 created or used by David DeLuce as part of his  
3 investigation of the complaints made by Barbara  
4 Varner?

5 MR. THOMAS: We believe that we have complied  
6 with the court's order and produced those  
7 documents which have been ordered produced. In  
8 fact, arguably we may have gone beyond the  
9 requirements of the court order in terms of  
10 documents produced. To our knowledge, we believe  
11 that we've produced the DeLuce investigative  
12 materials in accordance with the court's ruling.

13 MS. WALLET: Thank you, Mr. Thomas.

14 MR. THOMAS: You're welcome.

15 MR. ADAMS: Off the record.

16 (Discussion held off the record)

17 MR. ADAMS: Mr. Adams on behalf of Mr.  
18 Osenkarski. I just want to put on the record that  
19 the agreement between plaintiff's counsel and  
20 County counsel is that of those two parties in  
21 terms of waiving the objections except for that of  
22 form, there's been some evidence through this  
23 litigation that has included items that may  
24 warrant objections beyond objections simply just  
25 for form, that of conclusions of law,

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1 mischaracterizations, and questions that may be  
2 designed to have a witness speculate and, so,  
3 therefore, Osenkarski has not waived objections  
4 for such things.

5 MR. THOMAS: Does that mean you intend to  
6 assert those objections today, Paul, or are you  
7 simply making certain that the record is clear  
8 that you're not waiving them?

9 MR. ADAMS: The second, the latter.

10 MR. THOMAS: Okay.

11 MR. MacMAIN: I'll join in that objection I  
12 suppose.

13 MS. WILLIAMS: And I will join Paul's  
14 objections as well.

15 MS. WALLET: I'm still missing Deposition 2.

16 MR. THOMAS: (Hanging)

17 MS. WALLET: Thank you, Mr. Thomas.

18 MR. THOMAS: You're welcome.

19 BY MS. WALLET:

20 Q. Mr. DeLuce, finally this is the opportunity for me  
21 to ask you some questions regarding this lawsuit.  
22 I will do my best inasmuch as this room is  
23 somewhat large to keep my voice up. May we please  
24 have an agreement that if you would attempt to  
25 answer one of my questions you have at least heard

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1           that question?

2    A.     Yes.

3    Q.     And may we also have an agreement that if you  
4           attempt to answer my question you have understood  
5           that question, and if you do not understand it,  
6           you will ask for a clarification before you  
7           attempt to answer it?

8    A.     Yes.

9    Q.     Is there any reason, sir, physical or otherwise  
10           why you could not answer all of my questions  
11           truthfully today?

12   A.     No reason.

13   Q.     Where are you employed presently, sir?

14   A.     I'm employed by the law firm of Johnson, Duffie  
15           Stewart and Weidner.

16   Q.     And you are an attorney at law?

17   A.     I am an attorney at law.

18   Q.     How long have you been at your current law firm?

19   A.     18 years.

20   Q.     Did you have prior employment after law school?

21   A.     For one year I was a judicial law clerk at the  
22           York County Court of Common Pleas for Judge  
23           Buckingham.

24   Q.     When did you graduate from law school?

25   A.     In 1984.

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- 1 Q. Where did you get your law degree?
- 2 A. Widener University in Delaware.
- 3 Q. Did you have employment prior to law school but
- 4 after undergraduate school?
- 5 A. Yes. I worked for two years for a company called
- 6 Grove Manufacturing in Shady Grove, Pennsylvania.
- 7 Q. What did you do for them?
- 8 A. I was a district manager in the field.
- 9 Q. What's the nature of their manufacturing
- 10 operation?
- 11 A. They manufacture and sell hydraulic cranes.
- 12 Q. Where did you get your bachelor's degree?
- 13 A. Pennsylvania State University, University Park,
- 14 1979.
- 15 Q. In what field?
- 16 A. School of business, concentration in finance.
- 17 Q. Do you have any other advanced degrees other than
- 18 a law degree?
- 19 A. No, I do not.
- 20 Q. Did you have any other postgraduate training other
- 21 than what you've described?
- 22 A. No, I do not. You mean graduate from college?
- 23 Q. Correct.
- 24 A. No, I do not.
- 25 Q. In your job with Grove Manufacturing, did you have



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1 any responsibilities for EEO compliance?

2 A. No, I did not.

3 Q. Describe briefly what your district manager job  
4 was.

5 A. Primarily manage a district with distributors. It  
6 was sales and service coordination. It was field.  
7 I was located in the western United States. I had  
8 no employees under me.

9 Q. Describe the nature of your law practice for the  
10 past 18 years.

11 A. General practice of law. Initially probably more  
12 family law, criminal, civil litigation. It has  
13 evolved into health law, small business, labor and  
14 real estate.

15 Q. How long have you been doing work for the County  
16 of Cumberland?

17 MR. THOMAS: You mean him specifically or the  
18 law firm?

19 MS. WALLET: Him specifically.

20 A. I don't know for sure. My partner, Hank Johnson,  
21 was the county solicitor I believe through 1998.  
22 At times during his term as solicitor I was used  
23 as special counsel on certain matters. He became  
24 a solicitor I believe in 1986, so it would have  
25 been during that time.

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1 BY MS. WALLET:

2 Q. What kind of work did you do for the county  
3 between 1986 and 1998?

4 A. I recall working on contract matters. I recall  
5 working on labor matters.

6 Q. Can you be more specific in the labor matter?

7 A. Personnel issues. I was consulted frequently by  
8 the personnel director at the time. It might have  
9 dealt with family medical leave, it might have  
10 dealt with Fair Labor Standards Act, it might have  
11 dealt with other employment related issues.

12 Q. Which personnel directors have you worked directly  
13 with?

14 A. Dan Hartnett, Dan Monkin.

15 Q. Anyone else?

16 A. No, no one else to my knowledge or my  
17 recollection.

18 Q. I thought you were struggling to remember another  
19 name.

20 A. No, I'm not. I don't remember any other names.

21 Q. Mr. DeLuce, tell me how you first became aware  
22 that Barbara Varner had filed a complaint or a  
23 charge involving Gary Graham.

24 MR. THOMAS: Objection to the form. You may  
25 answer.

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1 A. I was notified I believe by my partner, Hank  
2 Johnson, that some type of complaint had been  
3 filed or had been made and that I was to  
4 communicate with Mr. Hartnett and assist him and  
5 advise him in whatever way.

6 BY MS. WALLET:

7 Q. Was this a verbal communication with Mr. Johnson  
8 or did you receive something in writing?

9 A. It was verbal.

10 Q. Do you recall when this was, sir?

11 A. I suspect based on reviewing the report that it  
12 was in April of 1997, but I can't recall anything  
13 more specific than that.

14 Q. Now, at that point in time your firm was the  
15 solicitor for the County of Cumberland?

16 A. Hank Johnson, Horace H. Johnson was the county  
17 solicitor. We were hired at times as special  
18 counsel on various matters as were other law  
19 firms.

20 Q. Do you know, sir, why the relationship between Mr.  
21 Johnson as solicitor and the County of Cumberland  
22 ended?

23 A. He resigned.

24 Q. To the best of your knowledge, sir, has your firm  
25 had any responsibilities with regard to the County

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1 of Cumberland since Mr. Johnson resigned in 1998?

2 A. I believe there may have been a couple files that  
3 had been opened during Mr. Johnson's tenure by our  
4 firm that we continued until they were completed.  
5 What they were, I have no recollection.

6 Q. Did you engage in any professional relationship  
7 with the county after 1998?

8 A. If there were any open files that I was handling,  
9 yes. I have no present recollection of what they  
10 are.

11 Q. Did you continue to be engaged as labor counsel  
12 after 1998?

13 A. No, unless there was a file already opened and I  
14 was already working on it prior to that time.

15 Q. Sir, have you had any special training in sex  
16 discrimination cases?

17 MR. THOMAS: Objection to the form. You may  
18 answer if you understand. I'm not sure what you  
19 mean by special training.

20 A. I have spent or did spend and continue to spend  
21 time going to seminars and training sessions on  
22 the legal topic. Continuing legal education is  
23 probably the best way to sum it up on a regular  
24 basis.

25 BY MS. WALLET:

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- 1 Q. And did that occur both before and after 1997?
- 2 A. Yes.
- 3 Q. Can you tell me what training you received before
- 4 1997?
- 5 A. On the job by working on cases that came into our
- 6 firm with another attorney of our firm as well as
- 7 attending seminars. I cannot be anymore specific
- 8 because I have no recollection.
- 9 Q. So, Mr. Johnson came to you and asked you to be in
- 10 contact with someone at the county?
- 11 A. That's my recollection.
- 12 Q. What did he tell you about the nature of the
- 13 complaint at that time?
- 14 A. I don't recall him giving me any specifics. I
- 15 recall him telling me to contact Mr. Hartnett to
- 16 get information.
- 17 Q. Did anyone else in your firm at that time do any
- 18 of the labor or employment work for the county?
- 19 A. Not that I can recall.
- 20 Q. So, if it was a labor problem it got referred to
- 21 you?
- 22 A. Yes, if the county wanted us to do it.
- 23 Q. Did Mr. Johnson do some of that work himself?
- 24 A. I don't know.
- 25 Q. Is there anyone else in the firm who did work for

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1 the County of Cumberland other than you and Mr.

2 Johnson?

3 A. Yes.

4 Q. Who was that?

5 A. I am not certain exactly who. I know that Roy

6 Weidner did. I know that James Johnson did.

7 There may have been others, I can't recall, it's

8 been six or seven years ago.

9 Q. Did Mr. Johnson tell you why he picked you for  
10 this particular assignment?

11 A. No.

12 Q. Did you ask?

13 A. No.

14 Q. What did you do as a response to Mr. Johnson's  
15 assignment?

16 A. My recollection is that I contacted Mr. Hartnett  
17 and asked him what he knew.

18 Q. What did he tell you?

19 A. I have no present recollection of what he told me  
20 other than to say that an employee in the  
21 probation department had complained about some  
22 form of sexual harassment.

23 Q. What did Mr. Hartnett ask you to do?

24 A. He wanted a recommendation as to what the county  
25 should do.

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23

1 Q. Did you speak with him on the phone or in person?

2 A. I'm sure initially I spoke to him on the phone and  
3 I also know that I discussed the situation with  
4 Mr. Johnson because of the unique nature of the  
5 probation department.

6 Q. And what do you mean by that, sir?

7 A. Well, they both pointed out to me, as I recall,  
8 that the probation department is under the control  
9 of the president judge and not the county.  
10 Therefore, the first issue was what would be our  
11 role.

12 Q. Who first raised that issue?

13 A. I believe it was Hank Johnson, that's my  
14 recollection.

15 Q. Now, if I might ask you, sir, to take a look at  
16 what we have marked as DeLuce Deposition Number 1.  
17 Can you identify for us which of that package  
18 constitutes notes in your handwriting?

19 A. It looks like mine start on Page 5 of 37 at the  
20 top of the fax and continue -- well, it looks like  
21 it's 5 of 37 through to 37 of 37, and then behind  
22 that it looks like 24 more pages and that does  
23 appear to be my handwriting.

24 Q. Did you keep any notes, sir, of any of your  
25 telephone conversations with Dan Hartnett or any

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24

- 1 other individuals at the county?
- 2 A. No.
- 3 Q. Did you take notes but they are no longer
- 4 available or you just didn't take any notes?
- 5 A. I did not take any notes of our phone
- 6 conversations to my recollection.
- 7 Q. Describe for me what your file for this matter
- 8 looked like.
- 9 A. Legal research was a large part of it, my notes of
- 10 meetings with witnesses that were interviewed by
- 11 Mr. Hartnett and myself, I'm sure there were some
- 12 correspondence. The file also contains documents
- 13 from the EEOC, Thomas, Thomas & Hafer and the
- 14 federal lawsuit.
- 15 Q. Do I understand, sir, you no longer have that in
- 16 your possession?
- 17 A. A complete copy of my file was provided to
- 18 counsel. I still have my file.
- 19 Q. Do you have the originals or does counsel have the
- 20 originals?
- 21 A. I have the originals.
- 22 Q. Did you bring those with you today?
- 23 A. No, I did not.
- 24 Q. When you say counsel, could you be specific? We
- 25 have a lot of lawyers here.



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1 A. Counsel for the County who is here with me today,  
2 Thomas, Thomas & Hafer.

3 Q. And that would Mr. Thomas and Mr. Dellasega?

4 A. Mr. Thomas and Mr. Dellasega.

5 Q. What was your understanding of the role of Thomas,  
6 Thomas & Hafer in this matter?

7 MR. THOMAS: Well, obviously we've been  
8 retained to defend a federal lawsuit and I do not  
9 want you to make inquiry of this witness of  
10 conversations he's had with us. I think that goes  
11 well beyond the court's order.

12 BY MS. WALLET:

13 Q. Did Thomas, Thomas & Hafer have some role prior to  
14 being retained to defend the county in this  
15 lawsuit?

16 A. My recollection is they were not brought in until  
17 the EEOC complaint stage, but I cannot give you  
18 any date certain. That's not something that I can  
19 recall.

20 MR. THOMAS: Nor would I permit him to  
21 testify to that.

22 BY MS. WALLET:

23 Q. Did you enter your appearance, yours personally,  
24 in any administrative or court?

25 A. My recollection is that I did file an answer on

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1           behalf of the county with the EEOC.

2       Q.     To the best of your recollection, sir, did you do  
3           anything else to formally represent the county?

4       A.     What do you mean by formally?

5       Q.     In an administrative agency or the court.

6           MR. THOMAS: You mean other than everything  
7           he did in terms of the investigation and including  
8           filing the answer to the EEOC complaint?

9           MS. WALLET: Yes.

10      A.     Not that I can recall.

11      BY MS. WALLET:

12      Q.     Did you engage in any settlement negotiations with  
13           anyone regarding this case?

14      A.     Yes.

15      Q.     With whom?

16      A.     I recall attending a meeting where you were  
17           present, your client was present, Mr. Thomas and  
18           Mr. Dellasega were present at Thomas, Thomas &  
19           Hafer. The date I have no present recollection.

20      Q.     And what was your role in that meeting?

21      A.     I was there on behalf of the County of Cumberland.

22      Q.     Were you their counsel at that time?

23      A.     I was one of their counsel at that time.

24      Q.     Did you enter into any engagement letter with the  
25           county with regard to your role in the

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- 1 investigation of Ms. Varner's complaints?
- 2 A. No.
- 3 Q. Was there any memorialization of what your role
- 4 was to be in this matter?
- 5 A. No.
- 6 Q. Were you paid by the hour for your work?
- 7 A. Yes.
- 8 Q. To whom did you transmit your invoices?
- 9 A. I can't recall for sure.
- 10 Q. Was this matter invoiced separate from the
- 11 invoices that may have been submitted by Mr.
- 12 Johnson as solicitor for the county?
- 13 A. Yes.
- 14 Q. Do you know who paid your invoices?
- 15 A. Do I know who paid it? I believe the county paid
- 16 the invoices, but I have no firsthand knowledge of
- 17 that. They have been satisfied, I know that.
- 18 Q. How much were you paid for your role in dealing
- 19 with the Varner complaint?
- 20 A. I don't know.
- 21 Q. Do you have an estimate?
- 22 A. No.
- 23 Q. More than \$10,000?
- 24 A. No.
- 25 Q. Not more?

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- 1 A. No. That's an estimate that it was not.
- 2 Q. Do you know what period of time you submitted
- 3 invoices for this matter?
- 4 A. I would suspect in 1997 and I believe there were
- 5 some subsequent ones after '97.
- 6 Q. Do you believe after 1998?
- 7 A. Yes.
- 8 Q. And what do you recall doing in that period after
- 9 1998?
- 10 A. I assisted Mr. Dellasega and Mr. Thomas in their
- 11 roles.
- 12 Q. Have you had any experience in doing
- 13 investigations of sex discrimination?
- 14 A. When you say experience, would you please explain
- 15 that?
- 16 Q. Prior to your being engaged to follow up on a
- 17 complaint filed by Ms. Varner, had you previously
- 18 conducted any investigations into matters of sex
- 19 discrimination?
- 20 A. Not that I can recall.
- 21 Q. Same question with regard to matters of sexual
- 22 harassment?
- 23 A. I have advised clients what their legal duties and
- 24 obligations are and assisted them carrying them
- 25 out.

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1 Q. Was this your first investigation into allegations  
2 of sexual harassment?

3 A. As I recall, this is the first one where I  
4 participated in the questioning of witnesses.

5 Q. Do you consider yourself to have expertise in the  
6 area of sex discrimination or sexual harassment?

7 A. What do you mean by expertise?

8 Q. Do you believe that by virtue of your training or  
9 experience you have a particular knowledge in this  
10 area?

11 A. I believe that by my training and experience I  
12 have knowledge of the law in this area and can  
13 advise my clients accordingly and assist them in  
14 carrying out their duties.

15 Q. Did you consider yourself to be an expert at the  
16 time that you engaged in your investigation of Ms.  
17 Varner's allegations?

18 A. Again, I'm not sure what you mean by an expert. I  
19 considered myself an attorney who practiced in the  
20 area of labor law and had knowledge of the law in  
21 this area.

22 Q. Okay, so Mr. Johnson tells you to call the county  
23 and you call Dan Hartnett. Tell me to the best of  
24 your recollection what Mr. Hartnett told you  
25 during that first conversation regarding these

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1 matters.

2 A. I cannot recall specifics of the conversation. I  
3 know that we had a conversation and I'm sure that  
4 Barbara Varner's name came up and that she was an  
5 employee in probation, the basics I'm sure came  
6 up, but I have no present recollection of that  
7 conversation.

8 Q. Do you believe that first conversation was on the  
9 telephone?

10 A. Yes.

11 Q. Did you later meet with Mr. Hartnett?

12 A. Yes.

13 Q. Do you recall whether the meeting was shortly  
14 after the telephone conversation?

15 A. I believe that it was, but in the interim I also  
16 know that we did some legal research on the  
17 county's role with a probation employee and the  
18 court's role.

19 Q. Ultimately you did meet with Mr. Hartnett I take  
20 it?

21 A. Yes, yes.

22 Q. Was it just you and Hartnett?

23 A. Yes.

24 Q. Describe for me what happened during that first  
25 meeting.

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1 A. I can't remember. I have no present recollection.  
2 It's been six and a half years ago. I'm certain  
3 we met and my recollection is that we sometime  
4 thereafter, whether it was the same meeting or at  
5 another time, had Barbara Varner meet with us in  
6 the conference room in the personnel department  
7 and had her tell us her complaints that she had  
8 apparently initially told to Mr. Hartnett.

9 Q. Did you exchange any documents with Mr. Hartnett  
10 prior to your meeting with Ms. Varner?

11 A. I can't recall.

12 Q. Do you believe that you may have had a copy of the  
13 written complaint prior to your meeting with Ms.  
14 Varner?

15 A. I can't recall. I believe that we asked Ms.  
16 Varner to prepare a written complaint. I don't  
17 know whether that was at the first meeting or  
18 whether Mr. Hartnett asked her to do so for our  
19 first meeting. I have no recollection. I do  
20 recall that we asked her to put her allegations in  
21 writing.

22 Q. Describe for me what you believed your mission was  
23 in this matter.

24 MR. THOMAS: Objection to the form. You may  
25 answer.

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1 A. Was to assist Mr. Hartnett on behalf of the county  
2 and conduct an investigation and report findings  
3 to the county solicitor.

4 BY MS. WALLET:

5 Q. That being Mr. Johnson?

6 A. Yes.

7 Q. Were you given any instructions as to how to  
8 conduct this investigation?

9 A. By whom?

10 Q. By anyone.

11 A. Not me personally.

12 Q. Did your firm or any other members of your firm  
13 get some instructions?

14 A. It's my understanding that someone spoke to the  
15 president judge and he authorized that the matter  
16 be investigated by the county on his behalf, but I  
17 did not participate in those discussions.

18 Q. And would that have been President Judge Sheely?

19 A. Yes.

20 Q. And how did you learn of that information?

21 A. Either from Mr. Hartnett or Mr. Johnson, I cannot  
22 recall.

23 Q. And you believed prior to your beginning this  
24 investigation that the president judge in  
25 Cumberland County knew that you were going to do



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1 this investigation?

2 A. I believe that he knew that because I had a  
3 concern that if the employees and the supervisors  
4 didn't cooperate, what authority did we have to  
5 make them cooperate.

6 Q. Were you given any assurance that these employees  
7 would be required to cooperate with you?

8 A. I was not.

9 Q. Did you understand that someone from your firm was  
10 given such assurance?

11 A. I can't recall whether that assurance was given to  
12 Mr. Johnson or somebody else at the county, but I  
13 believe Mr. Hartnett told me that somehow that  
14 communication came down the chain but I was not  
15 part of it.

16 Q. Did you at any time meet directly with President  
17 Judge Sheely?

18 A. One time that I can recall.

19 Q. Do you recall when that was?

20 A. I believe that was in early June while we were  
21 still meeting with witnesses.

22 Q. That would be June of '97?

23 A. Yes.

24 Q. Do you believe you met with Judge Sheely before  
25 you had interviewed all of the individuals that

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1           you intended to talk with?

2     A.     We met with Judge Sheely after I had spoken to  
3           quite a few witnesses and gave him some  
4           preliminary indications of what we were hearing  
5           and then we went back and called on a few more  
6           people to meet with us again to gather further  
7           information.

8     Q.     When you say we, who was present at that meeting?

9     A.     My recollection is that all meetings with  
10          witnesses Dan Hartnett was with me. He arranged  
11          them, he coordinated them, and he participated in  
12          those with me.

13    Q.     Actually my question wasn't very clear, but I  
14          meant the meeting with Judge Sheely who was there?

15    A.     I know that I was there, I know that Dan Hartnett  
16          was there, I know that Hank Johnson was there.  
17          There may have been others, but I have no present  
18          recollection.

19    Q.     Did you request this meeting?

20    A.     I don't recall who requested the meeting.

21    Q.     Do you think Judge Sheely requested it?

22    A.     I don't recall. I don't recall.

23    Q.     What did you understand the purpose of the meeting  
24          to be?

25    A.     To update him on what the employees were telling

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1 us and to get some guidance on where to go from  
2 there.

3 Q. What guidance did you receive at that time?

4 A. Go back and talk to a couple witnesses, including  
5 the two employees that were accused, and get some  
6 further information from them. And also talk to  
7 them and ask them to come up with a plan to  
8 address the situation.

9 Q. And when you say the two individuals who were  
10 accused, are we speaking of Gary Graham and Joe  
11 Osenkarski?

12 A. Yes.

13 Q. Anybody else?

14 A. No.

15 Q. Did you talk to anybody other than Gary Graham or  
16 Joe Osenkarksi as part of your investigation after  
17 you met with Judge Sheely?

18 A. I believe that we did, but I cannot tell you who,  
19 and I note that on my notes of meetings I did not  
20 always put the dates of the meetings.

21 Q. In this meeting with Judge Sheely, did you  
22 understand that you were expected to report back  
23 to Judge Sheely after you had done these things?

24 A. I understood that someone was to report back to  
25 Judge Sheely. I don't recall who it was, but it

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1 did not end up being me.

2 Q. Do you know why it wasn't you?

3 A. I think because Mr. Hartnett and I met with the  
4 county commissioners, Mr. Ward, Mr. Johnson, and  
5 told them what we were hearing from the witnesses,  
6 and I believe it was them who indicated either  
7 they or Mr. Ward would talk to the president  
8 judge.

9 Q. Mr. DeLuce, could you run down for me the  
10 significant events that occurred as part of your  
11 investigation, in other words, could you just tell  
12 me who you met with and what the series of events  
13 were?

14 MR. THOMAS: Objection to the form. I don't  
15 think that's a fair question because it requires  
16 him to make a qualitative evaluation of what the  
17 significant events were.

18 BY MS. WALLET:

19 Q. Strike the word significant. Could you tell us  
20 what events occurred from the time that you had  
21 your first we'll say meeting with Mr. Hartnett?

22 MR. THOMAS: To the extent that you can  
23 recall.

24 A. My recollection is that we met with Mrs. Varner,  
25 got her verbal statement, asked her to put it in

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1 writing. She did. And she also indicated to us  
2 people that we should talk to regarding the  
3 matter. So, we began the process of talking to  
4 other employees as well as to Mr. Osenkarski and  
5 Mr. Graham and there were many meetings a couple  
6 times with certain individuals as more facts came  
7 out that we wanted to verify or reverify or get  
8 versions of what may have transpired. It was an  
9 ongoing process that lasted for obviously  
10 sometime, I believe it started in April, and we  
11 were still continuing to meet with people into  
12 June of 1997.

13 BY MS. WALLET:

14 Q. So, you met with Varner, you interviewed some  
15 people, you went back to the meeting with Judge  
16 Sheely, met with some additional potential  
17 witnesses, then what?

18 MR. THOMAS: Well, he's already indicated to  
19 you earlier that he also conducted some legal  
20 research, reviewed legal precedents. That's my  
21 problem with the question. I do not want this  
22 question or the answer to be considered to be a  
23 complete analysis of his investigation. You have  
24 his very lengthy report which details in some  
25 detail the interviews, the things that he

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1 conducted. So, I object to the question because I  
2 think it's misleading.

3 A. Throughout the process I would take my notes and  
4 dictate a summary and that's how this report that  
5 you have before you was evolved. And I think that  
6 is why there are different dates and different  
7 versions because I would add to it as I learned  
8 more information. My impressions would change, my  
9 thoughts would change and it was an ongoing in my  
10 view work product that was my own impressions, but  
11 I included in that research that I had in my  
12 office from my research on these topics or as I  
13 thought I needed and I used that to help formulate  
14 legal opinions based on the facts after Mr.  
15 Hartnett and I would discuss them after talking  
16 with witnesses.

17 BY MS. WALLET:

18 Q. So, again, you met with some additional people,  
19 then someone met again with Judge Sheely, but not  
20 you?

21 A. Not me.

22 Q. When in this time frame did you meet with the  
23 Cumberland County commissioners?

24 A. I believe I met with them sometime in mid June and  
25 gave them verbally -- Mr. Hartnett and I both did

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1 and gave our impressions after what we were told  
2 by the many witnesses. I also gave them a  
3 synopsis of what my opinion of the law is and  
4 discussed their role as the county versus the  
5 court's. That was also an issue.

6 Q. And who was present at that meeting?

7 A. The county commissioners, John Ward, Horace  
8 Johnson, Dan Hartnett, myself.

9 Q. Could you identify the commissioners for me?

10 A. Earl Keller, Nancy Besch, Marcia Myers.

11 Q. Was anyone else present at that meeting to the  
12 best of your recollection?

13 A. No.

14 Q. Were you given any additional assignments as a  
15 result of that meeting with the Cumberland County  
16 commissioners?

17 A. No.

18 Q. Did you make any recommendations to the Cumberland  
19 County commissioners at that time?

20 A. I believe Mr. Johnson made some recommendations  
21 but not myself. I believe I was there to provide  
22 them with the legal issues and what the witnesses  
23 were telling myself and Mr. Hartnett.

24 Q. Did you give them anything in writing at that  
25 time?

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- 1 A. No.
- 2 Q. Did you ever give the county commissioners  
3 anything in writing?
- 4 A. No.
- 5 Q. Did you ever give Dan Hartnett anything in  
6 writing?
- 7 A. If I did -- I may have, I can't recall. It may  
8 have been cases, it may have been summary of the  
9 law, but I did not give him my memorandum that's  
10 the subject of the court's motion.
- 11 Q. After you met with the Cumberland County  
12 commissioners, did you interview any other  
13 individual?
- 14 A. I have no recollection that I did anything further  
15 other than maybe conferring with Mr. Hartnett,  
16 but, no, I did not interview anybody else.
- 17 Q. Did you consider your investigation to be complete  
18 at least by mid June of 1997?
- 19 A. I'm not sure if I would use the term complete. I  
20 think my role at that time was terminated or no  
21 longer -- I was no longer to continue the  
22 investigation.
- 23 Q. How did you come to the conclusion that your role  
24 was terminated?
- 25 A. My recollection was Mr. Ward indicated that he



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1 would go talk to the president judge to discuss  
2 the matter.

3 Q. And that being President Judge Sheely?

4 A. Yes.

5 Q. Did you participate in any other meetings  
6 regarding this investigation except for the  
7 meeting you described earlier at Thomas, Thomas &  
8 Hafer after you met with the Cumberland County  
9 commissioners?

10 MR. THOMAS: Objection to the form. You may  
11 answer.

12 A. I'm sure that I did in preparing responses to the  
13 EEOC, but I have no present recollection. My  
14 role -- or I was still involved as special counsel  
15 for the county on this matter. What exactly I did  
16 I have no present recollection.

17 BY MS. WALLET:

18 Q. What did you do in order to prepare the response  
19 to the EEOC?

20 A. I can't recall specifically.

21 Q. Do you know who verified the answer to the EEOC?

22 A. Not offhand, no, I do not.

23 Q. Do you know whether it was verified?

24 A. Not offhand. I don't have the document in front  
25 of me.

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1 Q. Could you describe the process? Did you draft the  
2 answers and then did someone look at--

3 MR. THOMAS: Let me have a moment with the  
4 witness if I may.

5 A. Yeah.

6 MS. WALLET: Let the record reflect that Mr.  
7 Thomas and Mr. Dellasega have now left the room  
8 with Mr. DeLuce.

9 (Recess taken)

10 BY MS. WALLET:

11 Q. Now, I believe when we broke I had just asked you  
12 to describe the process whereby the EEOC response  
13 was filed by you.

14 A. My recollection is that I drafted the response and  
15 I'm sure that I had input from Mr. Hartnett and  
16 Mr. Ward. But my response, as I recall, was that  
17 you sued the wrong party, that we had no control  
18 over the probation department and the employees in  
19 question; therefore, the Administrative Office of  
20 Pennsylvania Courts should have been the  
21 defendant. So, my recollection is that it was  
22 basically a legal argument.

23 Q. While we were off the record, did you have the  
24 opportunity to review any documents that refreshed  
25 your recollection?

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1 A. No, and I knew -- I recalled that -- no, I didn't  
2 look at any documents to refresh my memory.

3 Q. All right. We were still in the events that you  
4 participated in as part of your assignment from  
5 the county to investigate this complaint from Ms.  
6 Varner.

7 MR. THOMAS: Objection to the form. Go  
8 ahead.

9 MS. WALLET: I didn't get to the question  
10 yet.

11 MR. THOMAS: That's why I'm objecting, it  
12 wasn't a question.

13 BY MS. WALLET:

14 Q. My question is after you filed the EEOC response,  
15 whatever that response might have been, did you  
16 participate in any other meetings?

17 A. I believe that I did, but I cannot give you  
18 specifics. I know that I had discussions and  
19 meetings with Jim Thomas, Paul Dellasega, a  
20 representative from the county and/or Mr. Ward,  
21 but I cannot give you specifics in any way, shape  
22 or form.

23 Q. How would you describe the level of compliance of  
24 the individuals that you spoke with as part of  
25 this investigation?

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1 MR. THOMAS: Objection to the form. You may  
2 answer it if you understand.

3 A. Some were very forthcoming, some were not.

4 BY MS. WALLET:

5 Q. Did you believe you had sufficient cooperation by  
6 the individuals that you interviewed to allow you  
7 to come to some conclusions regarding these  
8 complaints?

9 MR. THOMAS: Objection to form. You may  
10 answer.

11 A. I felt that I had cooperation from plenty of  
12 witnesses. Some that didn't cooperate I tried to  
13 determine why. And in my view sometimes the lack  
14 of cooperation or being forthright with me or  
15 providing us with everything affected credibility  
16 issues.

17 BY MS. WALLET:

18 Q. Had you known or worked with -- let's ask it  
19 separately. Had you known any of the individuals  
20 that you spoke with as part of your investigation  
21 prior to undertaking the investigation?

22 A. The two individuals that were accused I did not  
23 know. In the probation department there may have  
24 been one or two that years ago when I did criminal  
25 work were involved with a defendant that I may

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1 have represented. I recognized a couple names and  
2 a couple persons, but they were not personal  
3 friends and they were tangential business  
4 acquaintances by virtue of them being a probation  
5 officer for someone who I may have been  
6 representing.

7 Q. And other than that description you just gave me  
8 of a professional acquaintance, did you have any  
9 professional responsibilities to represent any of  
10 these individuals that you interviewed?

11 A. I do not recall ever representing any of the  
12 persons that I interviewed as their attorney.

13 Q. Did you conduct all of these interviews in  
14 basically the same way or did the way in which you  
15 conducted the interview differ depending on who  
16 was being interviewed?

17 A. I'm not sure I understand the question.

18 Q. Did you have some sort of a predetermined script  
19 or a method of operation?

20 A. Yes. We took the complaints that were provided to  
21 us by Mrs. Varner and the person she said who  
22 either witnessed it or part of it, part of the  
23 incident, and we would question them on their  
24 role, what they saw or heard. And then if they  
25 told us of persons who may have seen or heard

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1 something or witnessed something, we would call  
2 them in and direct their attention to those issues  
3 to get their version of what transpired.

4 Q. Did you give any of these individuals with whom  
5 you spoke any documents?

6 A. I have no recollection of doing that.

7 Q. Do you have any recollection of showing them any  
8 documents?

9 A. I have no recollection. I may have or I may not,  
10 I don't recall.

11 Q. I ask you to look, please, at Deposition Exhibit  
12 Number 1. It's the package of your notes. I  
13 believe I asked you this question before, but as  
14 an abundance of caution I will ask you again. Do  
15 you believe that there were any notes of  
16 interviews that are not contained in this package?

17 MR. THOMAS: Objection, asked and answered.

18 A. My belief is that these are all of those  
19 documents. The only concern I have is John Roller  
20 and I just want to make sure my notes -- oh, it  
21 is, John Roller's notes are in here also.

22 Q. Would that be at the document marked 20 of 24?

23 A. Yes. Yes.

24 Q. And continuing through to 21 of 24?

25 A. 20 and 21. To be honest with you, I cannot

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1           decipher what I was doing with 22. Obviously 23  
2           is self-explanatory. I don't have 24 of 24 here.

3    Q.     Take a look at 24. We'll add it to the package.

4    A.     That looks -- that is the same, that's 23 of 24 in  
5           my packet.

6    Q.     I'm sorry, I stand corrected.

7    A.     I have no 24 of 24 in front of me.

8           MS. WALLET: Jim, do you know whether we have  
9           24?

10          MR. THOMAS: I do not. The last page of  
11          notes that I have is the document that you have as  
12          marked 23 of 24.

13          MS. WILLIAMS: I have 24 of 24 being the fax  
14          sheet, the concluding fax sheet from Thomas,  
15          Thomas & Hafer.

16          MS. WALLET: Thank you.

17    A.     Thanks.

18    BY MS. WALLET:

19    Q.     Do you believe, sir, that you conducted any  
20           interviews of anyone for which you did not have  
21           notes?

22    A.     Not to my recollection.

23    Q.     Sir, let's exclude the first several pages of this  
24           document which I believe we've already determined  
25           are not in your handwriting, and if you could just

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1 tell me which of those documents using the numbers  
2 at the top are not your notes?

3 A. 2 of 37, 3 of 37, 4 of 37 are not my notes.

4 Q. Let's start with 5 of 37 and could you identify  
5 for me what these are, whose interview notes they  
6 were?

7 A. This is my handwriting of a meeting that I had  
8 with Mike Varner. The date I am not certain.

9 Q. 6 of 37?

10 A. My handwritten notes of a meeting I had with Darby  
11 Christlieb in my handwritten notes. 7 is a  
12 continuation of that.

13 Q. Do we know what date you interviewed Darby  
14 Christlieb?

15 A. No.

16 Q. Do you know, sir, whether there is any  
17 significance to the order in which these notes are  
18 contained in this package?

19 A. I don't think there is any significance. I did  
20 not make this order.

21 Q. Did your original file have any ordered note?

22 A. No.

23 Q. So even if we saw your original file, we wouldn't  
24 be able to tell who you did first, who you did  
25 second, who you did third?



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1 A. No. All I can recall is we met with Mrs. Varner  
2 first. After that, I can't say for certain,  
3 because some of these people we met with more than  
4 once.

5 Q. Could you continue with the package, please?

6 A. Sam Miller, 8 of 37, Pages 1 and 2 -- or actually,  
7 8 and 9; Deborah Reitzel, Pages 10 and 11; Greg  
8 Miller, Pages 12 and 13; Mark Galbreath, Pages 14,  
9 15 and 16; Nick Baralett, Pages 17, 18; Jennifer  
10 Crum, and you can see I have a date there 4/22/97,  
11 I believe that to be the date I met with Jennifer,  
12 Pages 19 and 20.

13 Q. Page 20 has a lot of bleed through. I take it  
14 that your notes are only the top three lines?

15 A. Yes.

16 Q. And that any of this other document related to the  
17 reverse side of the sheet when it was copied?

18 A. Probably.

19 MR. THOMAS: Objection to the form. The  
20 representation, again, Deb, is what, the first  
21 three lines?

22 MS. WALLET: Yes.

23 MR. THOMAS: Oh, all right. I'm sorry, for  
24 the second page?

25 MS. WALLET: Correct.

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1 A. Want me to continue?

2 BY MS. WALLET:

3 Q. Please.

4 A. Page 21 is Gary Graham, Page 22 is Gary Graham,  
5 Page 23 is Gary Graham, Page 24 is Gary Graham.

6 Q. Do we know when you conducted that interview?

7 A. No, I do not. Page 25 is Joseph Osenkarski and  
8 that was conducted on 4/29/97. Page 26 is also  
9 Joseph Osenkarski. Page 27 is Kerry Howser, 28 is  
10 Kerry Howser, 29 is Kerry Howser, 30 is Kerry  
11 Howser. 31 is Deborah Green, 32 is Deborah Green,  
12 33 is Deborah Green, 34 is Deborah Green, 35 is  
13 Deborah Green, 36 is Deborah Green. Page 37 is  
14 Barbara Varner and we met with her on May 6th,  
15 1997.

16 Q. Again, the we is you and Mr. Hartnett?

17 A. Yes. Page 1 of 24--

18 Q. Is more of Ms. Varner?

19 A. I do not believe. Yes, I believe that Page 1 of  
20 24 -- I'm not certain what 1 of 24 is. I can't  
21 tell. There's obviously 2 of 24, which is a  
22 continuation of that. It may be all three for  
23 Barbara Varner, I don't know.

24 Q. If you could go back to 1 of 24, I call your  
25 attention to the note "when she was at C&Y," which

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1 I assume means Children and Youth, "he would" does  
2 that refresh your recollection?

3 A. You're on 1 of 24?

4 Q. Correct.

5 A. That is probably the second page of the Barbara  
6 Varner interview that occurred on 5/6/97.

7 Q. Now we're up to 2 of 24?

8 A. 2 of 24 is also a continuation of Barbara Varner  
9 and 3 of 24 is the last page of that Barbara  
10 Varner interview.

11 Q. All right.

12 A. The next one, 4 of 24, is Barbara Varner.

13 Q. Do you believe that these notes were taken before  
14 or after the earlier notes?

15 A. These look to have been taken before the earlier  
16 notes. I don't know what date they were taken.  
17 But 4 of 24, 5 of 24, 6 of 24, 7 of 24, 8 of 24, 9  
18 of 24, 10 of 24, 11 of 24, appear to all be the  
19 same interview.

20 Q. And that being the interview with Barbara Varner?

21 A. Yes. Page 12 of 24 appears to be the second time,  
22 it says BV-2, I assume that's the second time that  
23 I met with Mrs. Varner and that would have been on  
24 4/22/97. Page 13 of 24 is the second page of that  
25 interview. 14 of 24 I cannot identify what that

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1 is from, whether that is a continuation of the  
2 previous two pages or it is something independent  
3 of that, because I have at the top 2/4 telephone  
4 call. I can't identify that page.

5 Q. It is in your handwriting?

6 A. It is my handwriting.

7 Q. So, you are not sure whether it's notes of a  
8 telephone call with Barbara Varner or with someone  
9 else?

10 A. I can't identify that. I don't know who I had  
11 that conversation with.

12 Q. Do you believe it might have been a conversation  
13 with Debra Wallet?

14 A. Very possible.

15 Q. What about 15 of 24?

16 A. These are my own personal notes, but not of any  
17 witness.

18 Q. Do you recall--

19 A. Frankly, let me go off the record.

20 (Discussion held off the record between Mr.  
21 DeLuce and Mr. Thomas)

22 A. 15 of 24 is clearly my handwriting and I do not  
23 believe it is of any specific witness. The  
24 language at the bottom may have been from a  
25 conversation that we had with Mr. Osenkowski and

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1           this may have been his plan as to what to do that  
2           we asked him to come up with.

3                   16 of 24, obviously it's my handwriting  
4           addressing Barb. I put her name at the top, Barb  
5           Varner. It looks like it might be her work  
6           schedule when she will be available to talk to us,  
7           but I am not certain.

8   BY MS. WALLET:

9   Q.   Do you have any recollection of the "let me in"  
10       quote?

11   A.   I don't have any present recollection. I believe  
12       though there is a reference to that in my report.  
13       And I can tell you that my report what I would  
14       typically do is when I would be back at my office  
15       I would dictate a summary of my notes as to what  
16       the witnesses said while things were fresh in my  
17       mind because my notes are so cryptic it's very  
18       hard sometimes for me to recreate them six or  
19       seven years later.

20   Q.   And were the summary of your notes contained in  
21       what has been marked as DeLuce Deposition Exhibit  
22       2?

23   A.   Yes. You can see at the top Confidential Attorney  
24       Impressions. Those were my impressions. Do you  
25       want me to continue?

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1 Q. Please.

2 A. 16 and 17 I recognize as my handwriting and this  
3 must be information I suspect that Barb gave us,  
4 I'm not sure. I believe 18 is a summary of  
5 salaries of various employees. 19 is my  
6 handwriting. I have no present recollection of  
7 what that is.

8 Q. Do you know who Christy Steinbacher is?

9 A. No idea. 20 I believe is John Roller. 21 is John  
10 Roller. 22 is my own cryptic notes.

11 Q. Do you know what they relate to?

12 A. I would be speculating at this point. I can't  
13 recall presently.

14 MR. THOMAS: Don't speculate.

15 BY MS. WALLET:

16 Q. Can you at least tell me on 22 of 24 is that SM,  
17 GM with an underline on the left-hand side?

18 A. The left hand at the top is an SM, below that is  
19 an HT, below that is DC, below that is a GG, to  
20 the right it's JO, BV and obviously at the top I  
21 have Mike Varner.

22 Q. Can you identify any of those initials?

23 A. SM is Sam Miller, HT is Hank Thielemann, DC is  
24 Darby Christlieb, GG is Gary Graham, BV I believe  
25 is Barbara Varner, JO is Joseph Osenkowski.

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1 Q. I have to ask just one question under JO, do you  
2 know what a-s-p-a-r-g-u-s refers to?

3 A. That was an incident that is referred to in my  
4 report.

5 Q. Is it a spelling of--

6 A. Asparagus.

7 Q. Thank you.

8 A. Page 23 of 24 looks like is my handwriting. I  
9 don't know the source of that information, but  
10 that's my handwriting.

11 Q. Were those pages that were identified as notes of  
12 interviews, were there any writings on those notes  
13 that did not belong to you?

14 A. I did not see any when I reviewed those pages at  
15 this time.

16 Q. And except for the documents marked 1 through 4 of  
17 37, the rest of this package is your handwriting?

18 A. Yes.

19 Q. Do you believe that these notes, at least with  
20 respect to notes of interviews, accurately reflect  
21 what was told to you by the person being  
22 interviewed?

23 MR. THOMAS: Objection to the form.

24 A. I think it's my cryptic notes of what people were  
25 telling me and I certainly believe that I was

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1 accurate in what I wrote down. I think I was not  
2 complete in all areas.

3 Q. Now, as I understand the process, you would take  
4 these notes, go back to your office and dictate  
5 something?

6 A. Yes.

7 Q. Did you do the dictation on the same day or the  
8 next day after you did the interviews?

9 A. I tried to do it as soon thereafter as possible  
10 while the information was fresh in my mind.  
11 Whether it happened the same day, the next day, I  
12 can't tell you.

13 Q. Are there any other dictated versions of your  
14 interviews other than that contained in Deposition  
15 Exhibit Number 2 or Deposition Exhibit Number 3?

16 A. Not to my knowledge.

17 Q. So that if you interviewed someone and you took  
18 notes contained in Deposition Number 1, there  
19 would be a typed version contained either in  
20 Deposition Number 2 or Number 3?

21 A. I cannot say for certain there is a typed version  
22 of every interview. Attempts were made to have it  
23 that way, but whether that actually turned out, I  
24 can't tell you.

25 Q. Let's look at Deposition Number 2. Do you



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1 recognize that document, sir?

2 A. This document is dated April 30, 1997. Yes, I  
3 recognize it. It's a memorandum that says from  
4 me, DWD, to HAJ, Horace A. Johnson, of my office.

5 Q. Do you believe you prepared that document in this  
6 version, this version being the one that's marked  
7 Deposition 2, on or about April 30, 1997?

8 A. No.

9 Q. Describe for me when you believe that you prepared  
10 Deposition 2.

11 A. Deposition 2 was a work in process that after  
12 interviews I would add to it primarily the facts  
13 section. Therefore, I suspect what happened is no  
14 changes were made to the original date on Page 1  
15 even though changes were made to the body of the  
16 document. And I don't see it offhand, but I do  
17 recall when I looked at this, yes, Page 10 there's  
18 a reference that I met with Varner on May 6th,  
19 1997, so it was obviously after it. That's why  
20 this document was a work in process that would  
21 change from interview to interview and the date on  
22 the front cover is not the date of the last  
23 addition or change.

24 Q. Do you believe Deposition Number 2 to be your last  
25 version of what you've described as this work in

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1 progress?

2 A. No.

3 Q. Would you just look for a moment at Deposition  
4 Exhibit 3 and tell me whether you believe that's  
5 the last version of the work in progress?

6 A. To the best of my knowledge today, I believe this  
7 is the last version of this memorandum.

8 Q. Let me ask you, sir, with respect to Deposition  
9 Number 2, does it accurately reflect in the  
10 section marked Facts the information that was  
11 relayed to you by the individuals noted in  
12 Deposition Number 2?

13 MR. ADAMS: Facts or background?

14 MS. WALLET: Facts.

15 MR. THOMAS: Objection to the form. You may  
16 answer.

17 A. Yes.

18 BY MS. WALLET:

19 Q. Do you believe that there's anything contained in  
20 the Facts section of Deposition Number 2 that is  
21 inaccurate?

22 A. Well, let me say this. I think it's an accurate  
23 depiction by me of what the witnesses told me at  
24 that time. Whether the statement or allegation is  
25 true, they may not be true. It's based on what

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1 the witness told me at the time.

2 Q. Is there anything contained in Deposition 2 in  
3 Roman Numeral III entitled Facts on Page 6 through  
4 and including 24 that you believe does not  
5 accurately depict what was told to you by the  
6 individuals indicated?

7 MR. THOMAS: Objection to the question. I  
8 think it's exactly the same question that was  
9 responded to and he's testified that he believes  
10 that portion of the report accurately reflects  
11 what he was told without any comment on whether or  
12 not the facts as such are actually correct.

13 A. I agree.

14 BY MS. WALLET:

15 Q. Some time has passed since April 30, 1997. In the  
16 period of time since April 1997 have you become  
17 aware of any inaccuracies in your report marked  
18 Deposition 2?

19 MR. THOMAS: Objection to the form. You may  
20 answer.

21 A. I was advised by Mr. Hartnett I believe in July of  
22 1997 that Mr. Graham indicated that he and Mrs.  
23 Varner had a relationship and that he indicated  
24 this to Judge Sheely. He and Mrs. Varner both  
25 denied that they had a relationship when I spoke

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1 to them.

2 BY MS. WALLET:

3 Q. Did Graham at any time ever tell you directly that  
4 he had had a sexual relationship with Barbara  
5 Varner?

6 A. He told me that only one time -- strike that. No,  
7 he told me they did not have a sexual  
8 relationship.

9 Q. And that would be with respect to any of the times  
10 that you interviewed Mr. Graham directly?

11 A. Yes. I don't know that I asked him every time.

12 Q. Now, with respect to Deposition Exhibit Number 3,  
13 they have the same basic divisions, a Background  
14 section and Section III again is Facts. With  
15 respect to Deposition Exhibit 3 between Pages 6  
16 and 25 up to the part marked Attorney Impressions,  
17 do you believe that the facts contained here  
18 accurately reflect what was told to you by the  
19 individuals noted?

20 A. Yes.

21 Q. Since the writing of this version, this being  
22 Deposition 3, have you come to any realization  
23 that any of these facts are incorrect?

24 A. Again, as I stated with Deposition 2, I later  
25 learned that Mr. Graham indicated that there was a

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1 relationship between him and Mrs. Varner and  
2 obviously that is not reflected in my report. I  
3 reflected that there was not one as I recall.

4 Q. Would you describe for me what occurred between  
5 Deposition Number 2 and Deposition Number 3?

6 A. My recollection is that I became less concerned  
7 that we had a sexual harassment issue and more  
8 concern if we had anything it was an employment  
9 supervisory issue.

10 Q. And why did you come to that conclusion?

11 A. Based upon the treatment or management style  
12 towards the employees in the department.

13 Q. Whose management style?

14 A. I would say it's Mr. Osenkowski and Mr. Graham who  
15 were the accused here.

16 Q. Do you know whether you conveyed to Judge Sheely  
17 any recommendations as indicated in Deposition  
18 Number 2?

19 A. My recollection is that I felt that some type of  
20 suspension based on what I was hearing to date,  
21 sensitivity training, training on what is sexual  
22 harassment, and some transfer of supervisory  
23 responsibilities should be seriously considered,  
24 as well as the role of the overall supervisor in  
25 juvenile probation based on what he told me and

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1           what the others told me, his nonactive role in the  
2           day-to-day management I felt that since the  
3           president judge is busy trying cases and hearing  
4           cases and cannot be there to watch what goes on in  
5           that department, that he should have someone there  
6           who does.

7       Q.   And did you convey that directly to Judge Sheely?

8       A.   I conveyed those issues and concerns along with  
9           Mr. Hartnett to Judge Sheely in the one meeting  
10          that I can recall having with him.

11      Q.   And what if any response did you receive from  
12          Judge Sheely to those recommendations?

13      A.   Go go back and talk to Gary and Joe and ask them  
14          to come up with a plan and let's see what they  
15          come up with and indicate that you have some  
16          concerns with some of the things that you have  
17          heard to date from other employees. And we did  
18          meet with them again and tell them that.

19      Q.   And this meeting was with Mr. Graham and Mr.  
20          Osenkowski at the same time?

21      A.   My recollection is that it was separate. And my  
22          recollection is that it was separate and I think  
23          we put more of the burden on Mr. Osenkowski who  
24          was the overall supervisor.

25      Q.   So, there was a meeting or more than one meeting

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1           between you, Gary Graham, Dan Hartnett after you  
2           met with Judge Sheely?

3    A.    I can't recall specifically. My belief is it was  
4           one meeting with Mr. Graham and two meetings with  
5           Mr. Osenkarski, one when we gave him the directive  
6           to come back with something, and two when he came  
7           back to meet with us to give us some indications.

8    Q.    Describe for me the meeting with you, Dan Hartnett  
9           and Gary Graham.

10   A.    Which meeting?

11   Q.    Immediately after your meeting with Judge Sheely  
12           in which he instructed you to go to Graham and ask  
13           for his suggestions.

14               MR. THOMAS: Objection to the form. You may  
15           answer.

16   A.    My recollection is -- I don't have any specific  
17           recollection of specific discussions. I think the  
18           meetings would start out calm and escalate through  
19           the discussions with Mr. Graham.

20   BY MS. WALLET:

21   Q.    Do you know where this meeting took place?

22   A.    In the personnel conference room next to Mr.  
23           Hartnett's office at the county courthouse.

24   Q.    Just the three of you?

25   A.    Just the three of us.

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1 Q. Tell us what you recall about that meeting.

2 MR. THOMAS: Asked and answered.

3 A. That's all I can recall.

4 BY MS. WALLET:

5 Q. Well, who started the meeting?

6 A. I'm sure that I did and Mr. Hartnett had a role in  
7 it and we asked, we indicated I'm sure that there  
8 were concerns that we had what we heard from the  
9 witnesses and we wanted him and we were going to  
10 ask Mr. Osenkowski to come up with some  
11 recommendations as to how to address them in order  
12 to protect them and their employer.

13 Q. Do you have at least a month when you think that  
14 this meeting occurred?

15 A. It happened after we met with Judge Sheely. My  
16 recollection is we met with Judge Sheely sometime  
17 in early June, but I'm not certain of dates.

18 Q. Do you know whether you met with Gary Graham  
19 before you met with Joe Osenkowski?

20 A. I don't know that.

21 Q. Do you remember anything about the order in which  
22 these meetings occurred?

23 A. No.

24 Q. Okay, I'm still on the meeting with Gary Graham.

25 MR. THOMAS: There's no question I don't



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1 think. Ask a question, please.

2 BY MS. WALLET:

3 Q. What else do you remember occurring at that  
4 meeting?

5 A. Gary disagreed with what some of the witnesses had  
6 told us, said they were lying and it was  
7 untruthful.

8 Q. Did you tell Mr. Graham who said what?

9 A. I can't recall.

10 Q. Do you believe you did?

11 A. I think that if I recalled incidents he would have  
12 an idea of who I was talking about, but I can't  
13 recall specifics. I felt my role was to alert him  
14 to the allegations against him and get his version  
15 of what is being claimed.

16 Q. Do you recall any other response that Mr. Graham  
17 made?

18 A. I remember him having some documents that he  
19 indicated would prove he was right and they were  
20 wrong. And he let me see them from a distance and  
21 he said I don't think I'm going to give them to  
22 you and he pulled them back.

23 Q. Do you know what kind of documents they were?

24 A. No, I did not. No, they weren't prepared by me  
25 and I do not know.

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- 1 Q. Do you know whether they were handwritten or  
2 typed?
- 3 A. I can't recall.
- 4 Q. Did you ask to have copies of them?
- 5 A. Yes.
- 6 Q. What response did you get?
- 7 A. Whatever I said in my report. I can't -- whatever  
8 I said there.
- 9 Q. You said that it started calm and then it  
10 escalated. What do you mean by that?
- 11 A. Gary was upset and disagreed with what the  
12 witnesses said and felt they were not being  
13 truthful.
- 14 Q. Did he raise his voice?
- 15 A. He got excited would be how I would phrase it.
- 16 Q. Did he raise his voice?
- 17 A. Oh, sure.
- 18 Q. Did he swear?
- 19 A. I do not recall that, no.
- 20 Q. Did he have any suggestions for what ought to be  
21 done here?
- 22 A. Not that I can recall.
- 23 Q. Well, did he tell you what he thought you should  
24 do?
- 25 A. I think Gary felt that there was no harassment or

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1 any problems here and it was, therefore, nothing  
2 needed to be done.

3 Q. How did the meeting end?

4 A. I don't recall except that it, you know, we  
5 reached -- it ended. I don't know of anything in  
6 particular that I can recall at six and a half  
7 years ago.

8 Q. Tell me about the first meeting that you had with  
9 Joe Osenkarski, Dan Hartnett and yourself after  
10 you had spoken to Judge Sheely?

11 A. I think it would have been much the same, that we  
12 indicated that we have heard some statements from  
13 some witnesses that raise concerns to us that  
14 could cause some liability to the employer and  
15 that some action needed to be taken to address the  
16 situation for all parties involved. And we asked  
17 him to come up with a plan.

18 Q. What was Mr. Osenkarski's response?

19 A. He said he had some ideas, he would work on them  
20 and get back to us.

21 Q. What prompted you to have a second meeting with  
22 him?

23 A. He was to present those ideas to us.

24 Q. Back at the first meeting what else did you tell  
25 Mr. Osenkarski that you recall about the

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1           allegations?

2     A.     I believe -- I have no present recollection except  
3           to say I would have done the same as I did with  
4           Gary, that is, review the allegations with him. I  
5           can't recall him having any specific response  
6           except that he was not aware of them.

7     Q.     He was not aware of what?

8     A.     I think you're better off to look at my report  
9           where I summarize what Mr. Osenkowski said to us  
10          regarding the incidents that we reviewed with him.

11    Q.     And you are looking at which version?

12    A.     Why don't we go to version Deposition Exhibit 3?

13    Q.     That being the June 4, '97 version?

14    A.     Yes.

15    Q.     And you are referring us to what page?

16    A.     I don't know. I'm looking for it.

17           MR. THOMAS: While you're looking for that,  
18          off the record for a minute.

19           (Discussion held off the record)

20    A.     The question was?

21    BY MS. WALLET:

22    Q.     When we got a little off the record discussion you  
23           were looking for the page that would indicate your  
24           notes of this meeting.

25    A.     I'm not sure that Page 22 reflects specifically my

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1 notes of the meeting. Page 22 reflects a summary  
2 of what Mr. Osenkowski told us in our interviews,  
3 which was just a denial of everything in a summary  
4 word or words.

5 Q. Mr. Osenkowski told you that he had never seen  
6 Graham lose his temper?

7 A. Whatever I have in here is an accurate depiction  
8 of what I was told and what Mr. Hartnett was told.

9 Q. I'd ask you to read that paragraph please and then  
10 I'll ask you a couple of questions about it.

11 MR. ADAMS: The entire paragraph on Page 22?

12 MS. WALLET: Yes.

13 A. Yes, your question?

14 BY MS. WALLET:

15 Q. Did Mr. Osenkowski tell you that he had never seen  
16 Graham lose his temper?

17 MR. THOMAS: He's already told you that  
18 whatever Mr. Osenkowski told him is reflected.  
19 What are you asking him to do?

20 MS. WALLET: I'm asking him to confirm that  
21 Mr. Osenkowski told him that Graham never lost his  
22 temper.

23 MR. THOMAS: Do you have any independent  
24 recollection today of what Mr. Osenkowski told you  
25 during your interviews six and a half years ago?

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1 A. No.

2 MR. THOMAS: Other than what's written?

3 A. Other than what's written here on my notes, no.

4 BY MS. WALLET:

5 Q. Well, let me ask it this way. You wrote on Page  
6 22, quote: "He claims he has never seen Graham  
7 lose his temper, never use the "f" word, although  
8 upon further questioning admitted that at times  
9 Gary gets very excitable." Is that an accurate  
10 statement of what Mr. Osenkowski told you?

11 MR. THOMAS: We'll agree that you've read it  
12 correctly.

13 MS. WALLET: That's a different question.

14 MR. THOMAS: The question has been asked and  
15 answered.

16 BY MS. WALLET:

17 Q. Does that accurately reflect what Mr. Osenkowski  
18 told you?

19 MR. THOMAS: Objection to form. You can  
20 answer it.

21 A. Yes.

22 BY MS. WALLET:

23 Q. Do you have any written confirmation, typed  
24 confirmation, of what occurred when you met with  
25 Mr. Osenkowski the second time?

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1 A. If it's not in this report, the answer is no.

2 Q. And this report meaning Deposition?

3 A. 2 or 3.

4 Q. Well, did Mr. Osenkarski ever give you any  
5 suggestions as to what he thought should be done  
6 here?

7 A. Yes.

8 Q. Did you receive them in writing or otherwise?

9 A. I know we received them verbally. Whether they  
10 were in writing, I have no recollection of that.

11 Q. And what were Mr. Osenkarski's suggestions?

12 A. I can't remember specifically what they were. I  
13 don't have a present recollection of what they  
14 were.

15 Q. Do you remember anything?

16 A. I know that--

17 MR. ADAMS: Object to form.

18 A. I know that there were -- I believe there were  
19 some type of training or seminar or some type of  
20 educational program on what is sexual harassment.  
21 Beyond that I have no present recollection.

22 BY MS. WALLET:

23 Q. Did he recommend any transfers?

24 A. Not that I can recall. Not that I can recall  
25 other -- not that I can recall.

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- 1 Q. Did he recommend any suspensions?
- 2 A. No.
- 3 Q. Did he recommend any action be taken against Gary
- 4 Graham?
- 5 A. No, except -- and I can't remember the time
- 6 frame -- whether by then we had indicated that
- 7 another senior PO should be reviewing her work and
- 8 recommended that Gary not have direct supervisory
- 9 control over her. When that went into effect,
- 10 what he did in carrying it out, I can't remember,
- 11 but I do believe that at some point that that
- 12 occurred. I don't know when. You have to
- 13 understand we didn't have authority. We could
- 14 only make recommendations.
- 15 Q. Did you take any of the recommendations from Mr.
- 16 Osenkowski back to Judge Sheely?
- 17 A. I did not.
- 18 Q. Do you know if anyone else did?
- 19 A. I do not know if Mr. Hartnett or anyone else did.
- 20 Q. You did not meet again with Judge Sheely after you
- 21 spoke with Osenkowski and Graham to receive their
- 22 recommendations?
- 23 A. I have no memory of any subsequent meeting with
- 24 Judge Sheely.
- 25 Q. Do you know whether Judge Sheely received a copy



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1 of what has been marked as Deposition Number 3?

2 MR. THOMAS: Objection to form. Misstates  
3 the testimony.

4 A. I did not give him a copy of that Deposition  
5 Number 3. If he received it, it came from  
6 somebody else.

7 BY MS. WALLET:

8 Q. Did you give Deposition Number 3 to anyone other  
9 than Horace A. Johnson?

10 A. I never gave Deposition Number 3 to Horace A.  
11 Johnson.

12 Q. After you did Deposition Number 3, what did you do  
13 with it?

14 A. Stuck it in the file.

15 Q. Did you give it to Dan Hartnett?

16 A. No.

17 Q. Did Dan Hartnett ever receive anything that could  
18 be considered a written report from you of your  
19 investigation?

20 A. Not directly from me.

21 Q. Do you believe that Mr. Johnson gave a written  
22 report to Mr. Hartnett?

23 A. I have come to learn that there was a letter from  
24 Mr. Johnson to Mr. Hartnett -- strike that. Can I  
25 see that letter? I'd just like to see that first

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1 before I make any comments.

2 Q. Let the record reflect that I'm handing what's  
3 been marked as Deposition Number 4.

4 A. I have come to learn that a letter was sent by Mr.  
5 Johnson to Mr. Hartnett on June 26th, 1997.

6 Q. And how did you come to that knowledge?

7 A. I was told by Mr. Johnson at some subsequent point  
8 that he retrieved the report from my file and  
9 delivered it to the county. Who he delivered it  
10 to, I was not certain. I saw this letter of June  
11 26th, 1997, just recently.

12 Q. Do you know what copies were attached or enclosed  
13 with the June 26th, 1997, letter marked Deposition  
14 4?

15 A. No, I do not.

16 Q. So, today you are not sure what went to Dan  
17 Hartnett except for this letter dated June 26th,  
18 1997?

19 MR. THOMAS: Objection to the form. He's not  
20 even sure -- you can't put him in a position to  
21 tell you what went to Hartnett. All he can say is  
22 he has seen the letter that was addressed to him.  
23 He would have no way of knowing whether Hartnett  
24 got it or not.

25 A. I'm sorry, your question is?

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1 BY MS. WALLET:

2 Q. Do you know whether anything other than Deposition  
3 Number 4 went to Dan Hartnett?

4 A. I don't know what went to Dan Hartnett other  
5 than -- I don't even know that Deposition Number 4  
6 went to Daniel Hartnett. I presume it does  
7 because I see a letter addressed to him with the  
8 date with attachments, but I don't know that that  
9 went to him. I have no recollection of a  
10 discussion with Mr. Hartnett that he received this  
11 letter.

12 Q. Did you have any discussions with Mr. Johnson  
13 after June 26th, 1997, relative to this letter?

14 A. Yes -- no, relative to the letter, no.

15 Q. Did you have any discussions with Mr. Johnson  
16 relative to this investigation after June 26th,  
17 1997?

18 A. I'm sure that I did.

19 Q. Do you recall the substance of any of those  
20 discussions?

21 A. I believe they are confidential between two  
22 attorneys in the same law firm.

23 Q. When did you learn that any action had been taken  
24 against Gary Graham or Joseph Osenkarski?

25 A. I got a telephone call from Mr. Hartnett somewhere

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1 on or near the 4th of July because I was off and  
2 he called me at home to tell me what he had heard  
3 transpired.

4 Q. So, Hartnett calls you at home and what does he  
5 tell you?

6 A. He said that there was a meeting with Judge Sheely  
7 and Mr. Graham and that his wife was present and  
8 that Mr. Graham indicated that he had had an  
9 affair or relationship with Barbara Varner and  
10 they discussed that with Judge Sheely and then he  
11 told me what Judge Sheely did as far as any  
12 disciplinary action regarding that.

13 Q. And what did Hartnett tell you that Sheely did?

14 A. My recollection is there was a couple days'  
15 suspension and I can't remember the rest of it,  
16 that's over six years ago, but I know that there  
17 was a suspension. Beyond that I don't recall.

18 Q. Do you know who was suspended?

19 A. I believe that Mr. Graham was suspended.

20 Q. Do you know whether Mr. Osenkowski was suspended?

21 A. I do not recall that he was, but I'm not certain.

22 Q. Do you know whether any disciplinary action was  
23 taken against Mr. Osenkowski?

24 A. I do not know what Judge Sheely may have done.

25 Q. Did you have any discussions with Mr. Hartnett

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1 after the July 4th conversation?

2 A. Sure.

3 Q. Relative to this matter?

4 A. Well, certainly we discussed the revelation by Mr.  
5 Graham and what impact that may have had upon our  
6 investigation.

7 Q. What do you recall about that discussion?

8 A. Well, I think it's a fact that I think would have  
9 been relevant for us to be aware of in what we  
10 did. And if you notice the cases that I cited in  
11 my memorandum, they did not, as I recall, deal  
12 with a situation where the parties had some type  
13 of relationship. It was simply claims of sexual  
14 harassment as I recall. I certainly would have  
15 looked at the situation differently.

16 Q. In what way?

17 A. Well, you're asking me to speculate. I think I  
18 would have liked to have asked some more questions  
19 of the parties regarding the matter to get a  
20 better understanding of what transpired, look at  
21 the relevant case law and come up with further  
22 recommendations is the way I would have handled  
23 it.

24 Q. But you were not asked to do that?

25 A. No.

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1 Q. Were you asked to do anything after June 26th,  
2 1997?

3 A. Continue representing the county on any legal  
4 matters involving this situation which included --  
5 I have no present recollection of when we were  
6 served with the EEOC documents, but I know that I  
7 was involved in that.

8 Q. You were not asked to do anything else with  
9 respect to investigating Barbara Varner's  
10 complaint after June 26th, 1997?

11 A. No, in my view the employer made their  
12 determination. The judge decided what was to be  
13 done.

14 Q. Did you believe that your investigation was  
15 concluded by June 26th, 1997?

16 MR. THOMAS: June what?

17 MS. WALLET: 26th.

18 A. I believe that it was based on the facts that were  
19 given to us to date.

20 BY MS. WALLET:

21 Q. To date meaning today or June 26th of '97?

22 A. June 26th of 1997.

23 Q. In any event, nobody asked you to do anything  
24 after June 26th, 1997?

25 A. No.

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1 MS. WALLET: Okay, let's take a break now.

2 (Lunch recess taken)

3 BY MS. WALLET:

4 Q. Mr. DeLuce, you are certainly still under oath.

5 You understand that?

6 A. I understand that.

7 Q. Would you tell me, please, what recommendation you

8 made to Judge Sheely as a result of your

9 investigation?

10 A. I made no recommendation to Judge Sheely. I

11 indicated to him that I had some concerns with

12 what I saw -- or what I heard from the witnesses,

13 not only from there was some concern about

14 potential sexual harassment, but also management

15 issues, and I felt that some action needed to be

16 taken and movement of personnel also needed to be

17 done in order to terminate this matter from a

18 legal standpoint and also from the employees'

19 perspective.

20 Q. And when you say from the employees' perspective,

21 who are you referring to?

22 A. Well, I think my report reflects that there was

23 some issues by many members of the department with

24 management of the department and there were

25 concerns and I thought from a personnel standpoint

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1           that somebody needed to address those issues as  
2           well.

3    Q.    And did you make any specific recommendations  
4           about what should be done?

5    A.    To Judge Sheely, no, I did not.

6    Q.    Was there anything else that you recommended to  
7           Judge Sheely that you haven't just told me?

8    A.    No.

9                   MS. WILLIAMS: I'm going to object to the  
10           form of that question. I think his testimony was  
11           that he made no recommendations. So, I would  
12           object to your characterization as a  
13           recommendation.

14   BY MS. WALLET:

15   Q.    Did you make any recommendations at all as a  
16           result of your investigation to Judge Hoffer?

17   A.    No.

18   Q.    Did you make any recommendations at all to anyone  
19           with the County of Cumberland?

20   A.    I did indicate to the county commissioners and Mr.  
21           Ward that they should urge the judge to take some  
22           action based upon what we had heard from the  
23           witnesses and my concerns would be to both the  
24           court and what my concerns would be to my client,  
25           the county, and I think they are stated in my



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1 Deposition Exhibit Number 2.

2 Q. So, what is contained in Deposition Exhibit Number  
3 2 on Page 24 and 25 is your summary of what you  
4 told the county commissioners?

5 MR. THOMAS: I have an objection to the form  
6 in terms of date. I think my recollection is that  
7 the meeting with the commissioners was after the  
8 later report.

9 A. It was after the later report and my recollection  
10 is that there should be some action taken, but of  
11 course the county could not do it. They were  
12 going to go talk to Judge Sheely, but I felt there  
13 should at least be a suspension, sensitivity  
14 training, maybe a management change and monitoring  
15 of the situation because of the concerns that Mr.  
16 Hartnett and I had after talking to the witnesses.  
17 But we didn't give anything specific. We gave  
18 them a range of what can be done and then they  
19 were going to take that in some manner and go see  
20 Judge Sheely.

21 BY MS. WALLET:

22 Q. They meaning?

23 A. The commissioners and Mr. Ward.

24 Q. Do you know whether that occurred?

25 A. I was not personally present.

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1 Q. Do you have any information to believe that that  
2 occurred?

3 A. I believe that there was a meeting. Who attended  
4 and what was said, I do not know.

5 Q. Now, you said your recommendation of action  
6 included suspension. Suspension of whom?

7 A. The supervisors involved with this situation.

8 Q. Specifically?

9 A. Mr. Osenkowski and Mr. Graham.

10 Q. And did you make a recommendation even though it  
11 be a range for what those suspensions should be?

12 A. I gave no range.

13 Q. Did you recommend specifically what kind of  
14 management change you would recommend?

15 A. I felt that based on what the witnesses had told  
16 me Joe was not running the day-to-day operations  
17 of the department and they needed somebody in  
18 there to oversee and do that and keep an eye on  
19 the situation. And I suggested that they consider  
20 talking to Mr. Osenkowski about retiring since he  
21 was vested in his retirement plan -- but you have  
22 to understand the county could not do that, that  
23 would have been up to the judge -- and then have  
24 somebody else maybe supervise the department and  
25 Mr. Graham.

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1 Q. Someone could supervise Mr. Graham?

2 A. Yes.

3 Q. Did you recommend any change in physical location  
4 for either Mr. Osenkarski or Mr. Graham?

5 A. Specifically, no, because I've never seen the  
6 department myself.

7 Q. Did you recommend that Graham be separated from  
8 Varner?

9 A. Yes.

10 Q. What was the nature of your recommendation?

11 A. Well, I felt that it was a situation that would  
12 continue and in order to stop that for both  
13 parties involved and to remove the allegation of  
14 sexual harassment that there should be some  
15 separation of the parties in the workplace from  
16 supervisory control.

17 Q. Why did you think the situation would continue?

18 A. As I said, the judge who has ultimate supervision  
19 is busy, he's trying cases, he's in a different  
20 floor. This is not something that he is able to  
21 stay close to from what I could tell and it was  
22 clear from the witnesses and even Mr. Osenkarski  
23 that he was not into handling the day-to-day  
24 activities.

25 Q. What monitoring did you have in mind?

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1 A. I had none in mind that I could specify to you.

2 Q. I believe that was one of your list of  
3 recommendations?

4 A. Yeah, but it's not -- I think that's for the judge  
5 to decide that, not me.

6 Q. Did you make any recommendation with regard to the  
7 what I'll call seniority issue, do you understand  
8 what I mean by the seniority issue?

9 A. I have no present recollection of making a  
10 recommendation regarding the seniority issue.

11 Q. Did you believe that the county could issue any  
12 regulations or policies with regard to how  
13 seniority was treated?

14 MR. ADAMS: Objection. How would this  
15 witness be qualified to answer that question?

16 MS. WALLET: He represents the county, so he  
17 says.

18 MR. ADAMS: Are you asking him to interpret a  
19 policy by the county?

20 MS. WALLET: Is that an objection?

21 MR. ADAMS: Objection based on the fact that  
22 he's not qualified to respond based on the  
23 policies.

24 BY MS. WALLET:

25 Q. You may answer the question.

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1 A. Should I answer the question?

2 MR. THOMAS: Yeah.

3 A. My understanding was that these type of policies  
4 were developed by the judge and not the county  
5 and, in fact, I was told that employees who were  
6 dissatisfied with the policy went to see the judge  
7 to give their viewpoint. This was not in my view  
8 within the county's domain.

9 BY MS. WALLET:

10 Q. Did you believe the county had any ability to  
11 remedy any of this situation?

12 MR. THOMAS: Objection to the form.

13 MR. ADAMS: What situation?

14 MS. WALLET: Complaints brought by Ms.  
15 Varner.

16 A. No.

17 BY MS. WALLET:

18 Q. No, you believe that they had no ability to  
19 remedy?

20 A. That's correct.

21 Q. Who did you believe had the ability to remedy?

22 A. If any changes were to be made or a remedy was  
23 needed, it would be up to the president judge who  
24 controlled that department, not the county.

25 Q. Why did you bother to make recommendations if you

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1           didn't think that the county had any ability to  
2           implement them?

3    A.     Who are you referring that those recommendations  
4           were made to?

5    Q.     Well, let's start with Deposition 2.

6    A.     First of all, you have to understand that  
7           Deposition 2 was a work in process. It evolved  
8           into Deposition 3, just so you understand that.  
9           I'm sorry, repeat your question, please.

10   Q.     Why did you bother to make recommendations if you  
11           didn't think the county had any ability to  
12           implement them?

13   A.     Because the county certainly had the ability to  
14           recommend those to the president judge and they  
15           wanted something from their legal counsel as to  
16           what the options were.

17   Q.     Did you consider that you were an investigator for  
18           the court?

19   A.     I considered myself as an attorney for the county  
20           who was conducting an investigation.

21   Q.     For whom?

22   A.     The investigation in my view was at the request of  
23           the president judge and with his authority. It  
24           was done though by the county personnel office and  
25           myself.

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1 Q. Did you consider yourself to be the president  
2 judge's lawyer?

3 A. No.

4 Q. Why did you believe that you were investigating at  
5 the request of the president judge?

6 A. Because I knew very early on that the county had  
7 no authority to make personnel changes in the  
8 probation department.

9 Q. Did the president judge give you any direction  
10 with regard to conducting an investigation into  
11 the allegations made by Barbara Varner?

12 A. Not that I can recall except for the one meeting  
13 we had, which I've already explained my  
14 recollection of what transpired.

15 Q. To the best of your knowledge, did the court pay  
16 for any of your investigative activity?

17 A. I didn't see the checks when payments were made,  
18 but to the best of my knowledge it was paid by the  
19 county.

20 Q. Now, this memo marked Deposition 2 was actually  
21 from you to your would you call him your superior,  
22 Horace Johnson?

23 A. I would call him my partner at the time.

24 Q. Did Mr. Johnson direct you to write this memo to  
25 him as opposed to someone else?

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1 A. I can't recall what he may have directed at that  
2 time. I obviously -- the way I drafted it, it was  
3 addressed to him, but I never physically gave it  
4 to him.

5 Q. How did he get it?

6 A. I presume he took it out of the file.

7 Q. And you don't know when that happened?

8 A. I suspect it was -- I believe it was during the  
9 last week of June of 1997.

10 Q. Why didn't you write a report directed to Dan  
11 Hartnett?

12 A. Because these were my own impressions and my own  
13 thoughts as an attorney after talking to witnesses  
14 and doing my own research. I did not prepare this  
15 with the intention of giving it to my client. I  
16 would have done it differently.

17 Q. Did you consider yourself to be an independent  
18 investigator?

19 A. What do you mean by independent?

20 MR. THOMAS: Objection to form.

21 BY MS. WALLET:

22 Q. Independent to the parties involved.

23 A. No, I felt myself as counsel for the county.

24 Q. What caused you to change what was Roman Numeral  
25 Number IV, Recommendation, in the April 30, '97



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1 memo to Attorney Impressions in the June 4 '97

2 memo marked Deposition 3?

3 A. As the process continued and the interviews  
4 continued, I became less and less concerned with  
5 the sexual harassment and more concerned with a  
6 management personnel issue in the department and  
7 that is why I recall making changes to my  
8 recommendations.

9 Q. Did you believe that the change from  
10 recommendation to attorney impressions would  
11 somehow protect this document from future  
12 disclosure?

13 A. I typically put that on my file memorandums that I  
14 want to keep for my future reference and because  
15 they are for me. If they are intended for the  
16 client, I would do it differently.

17 Q. So, you really never intended to conduct an  
18 investigation, prepare a report and submit that  
19 report to someone?

20 MR. THOMAS: Objection to the form.

21 A. If my client had asked me for a written report, I  
22 would discuss that with them, and if they wanted  
23 that, I certainly would give them a written  
24 report.

25 BY MS. WALLET:

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- 1 Q. And they never asked you for that?
- 2 A. I have no recollection of Mr. Hartnett asking me  
3 for a written report.
- 4 Q. When you say if my client had asked me for a  
5 written report, you are speaking to someone in  
6 authority with the County of Cumberland?
- 7 A. Well, Mr. Hartnett would have been sufficient for  
8 me or the chief clerk or the commissioners.
- 9 Q. And not one of those three entities ever asked you  
10 for a report?
- 11 A. I have no recollection of any of them asking me  
12 for a written report.
- 13 Q. Would you look, please, at Deposition Exhibit 3,  
14 the first page? You write at the bottom of the  
15 first full paragraph: "The written complaint from  
16 Barbara Varner as well as her proposed solution to  
17 the problem were submitted in writing at my  
18 request." Were those the written complaints that  
19 were referenced in the prior sentence?
- 20 A. Yes.
- 21 Q. So, you had in your possession the complaint that  
22 Barbara Varner had written to Dan Hartnett dated  
23 April 28, 1997?
- 24 A. Yes.
- 25 Q. Did you have anything else in writing from her?

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1 A. I don't know. I can't recall.

2 Q. Did you believe that you had a satisfactory  
3 description of Ms. Varner's complaint prior to  
4 your engaging in the interview of witnesses?

5 MR. MacMAIN: Objection. Do you mean based  
6 on the writing or you said the first thing he said  
7 was interview her or--

8 MS. WALLET: Based on the writing.

9 A. I'm not sure what you mean by satisfactory. She  
10 provided us verbally and then in writing her  
11 allegations and then we embarked upon talking to  
12 her and witnesses that she either told us or that  
13 we thought had relevant knowledge of these  
14 incidents to try and determine the facts.

15 BY MS. WALLET:

16 Q. My question was did you believe that you  
17 sufficiently understood what Barbara Varner was  
18 complaining about in order to engage in some  
19 investigation of those complaints?

20 MR. THOMAS: Objection to form. You may  
21 answer.

22 A. Yes.

23 BY MS. WALLET:

24 Q. What was your understanding of what Barbara Varner  
25 was complaining about?

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1 A. That she was working in a hostile environment, it  
2 was made hostile by her immediate supervisor, Mr.  
3 Graham, and that he treated her differently than  
4 others.

5 Q. And did she indicate that she believed she was  
6 treated differently because of her gender?

7 A. I don't have the written complaint in front of me  
8 so I don't know what's in there. If you're asking  
9 me to comment about whether that's in there or  
10 not, I don't know. I certainly recall verbally  
11 that her concern was that she was treated  
12 differently because of her gender. I don't know  
13 whether it's in the written complaint.

14 Q. Did she have any complaints about Joseph  
15 Osenkowski and his treatment of her because of her  
16 gender?

17 A. Without looking at her complaint and my notes, I  
18 can't recall that independently. But certainly  
19 her complaint was against him as well as Mr.  
20 Graham, that I do recall.

21 Q. Did she complain to you about Joseph Osenkowski's  
22 failure to stop what she considered to be the  
23 harassment by Gary Graham?

24 A. Yes.

25 Q. Did you understand her complaint to be that she

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1 was treated differently with regard to seniority  
2 because of her gender?

3 A. Did I understand that was her complaint that she  
4 felt she was treated differently because of her  
5 gender and seniority?

6 Q. Yeah.

7 A. I think that was her complaint. That doesn't mean  
8 that I necessarily agreed with that.

9 Q. I understand. I'm just asking you what you  
10 understood to be the complaint that you were  
11 investigating. Did you understand Ms. Varner's  
12 complaint to be that she had been treated  
13 differently after she had complained about Mr.  
14 Graham's treatment of her?

15 A. She expressed to us a concern for retaliation,  
16 yes.

17 Q. Did you understand her complaint to be that she  
18 was treated differently because of her age?

19 A. I do not recall any age basis to her claims. I  
20 qualify that and all of this line of questions  
21 with the fact I don't have the written complaint  
22 in front of me.

23 Q. If it was in the written complaint, you believe  
24 that you had a duty to investigate?

25 A. Yes.

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1 Q. Were there any complaints in this written  
2 complaint form dated April 28, 1997, that you  
3 believed you did not have a duty to investigate?

4 A. Can I see the complaint?

5 Q. Maybe.

6 MR. THOMAS: Note my objection to the form.

7 MS. WALLET: Your objection being to your  
8 witness asking for something?

9 MR. THOMAS: No, to the form of your prior  
10 question.

11 BY MS. WALLET:

12 Q. I'd like to show you what has previously been  
13 marked in this matter as Varner Deposition Number  
14 1.

15 A. The document you handed to me is dated April 25,  
16 1997. I don't know why my memorandum refers to  
17 April 28th, 1997. I presume it's the same  
18 document, but I do not know that for certain. I  
19 see in her complaint she says she feels she has  
20 been discriminated or harassed in relation to her  
21 age, sex and marital status. I'm sorry, your  
22 question is?

23 Q. I don't remember exactly what my question was, but  
24 let me ask a different question. Now that you've  
25 had a chance to review Varner Deposition Number 1,

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1 do you believe that to be the writing that you had  
2 in your possession at the time you engaged in the  
3 investigation of Ms. Varner's complaints?

4 A. It looks like the document that I had previously  
5 seen.

6 Q. Is it the document that you referenced in  
7 Paragraph 1 of Deposition Number 3?

8 A. Again, I believe it is, but there are different  
9 dates.

10 MR. THOMAS: They deviate by a day.

11 A. Actually April 28th is what my memo says and this  
12 is dated April 25th.

13 MR. THOMAS: I'm sorry, three days.

14 A. I don't know whether it is the -- I don't know  
15 what I'm referring to, whether it's the date it  
16 was given to me or the actual date of the memo.

17 BY MS. WALLET:

18 Q. Mr. DeLuce, if we had your original file would it  
19 have attached to Deposition Number 3 or some  
20 version of Deposition Number 3 documents that you  
21 had to work with at the start of your  
22 investigation?

23 A. I believe a memorandum from Barbara Varner would  
24 be in the file. Whether it's attached to this  
25 document, I don't know. I can tell you I do not

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1 have in my file Deposition Exhibit Number 3. I  
2 only have in my file Deposition Exhibit Number 2.

3 Q. Could I have Varner 1 back, please?

4 A. Sure.

5 Q. Now let me ask you, sir, did you come to any  
6 conclusions regarding whether or not there was a  
7 hostile environment for Barbara Varner when you  
8 conducted your investigation?

9 MR. ADAMS: Objection, calls for a legal  
10 conclusion I would think and it's inappropriate  
11 for this witness.

12 MR. THOMAS: Objection to the form. You may  
13 answer.

14 A. I felt that at times there was a hostile  
15 environment, especially as perceived by the  
16 employee.

17 BY MS. WALLET:

18 Q. And when you say the employee, you mean Barbara  
19 Varner?

20 A. Barbara Varner.

21 Q. Did you find any evidence that other individuals  
22 in the office believed that Barbara Varner was  
23 subjected to a hostile environment?

24 MR. ADAMS: Same objection.

25 MR. THOMAS: Same objection. Any employees?



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1 MS. WALLET: Any employees.

2 A. I think what's reflected in my report, who and  
3 what they said to me, you can make your own  
4 conclusions from what they said.

5 BY MS. WALLET:

6 Q. Did any employees confirm the allegations of  
7 Barbara Varner regarding hostile environment?

8 A. Yes.

9 Q. Which employees?

10 A. You want me to go through the report and specify  
11 them? I think my report speaks for itself. I  
12 have no present recollection and, in fact, would  
13 not recognize most of those people if they walked  
14 in this room today.

15 Q. Did you reach any conclusions as to whether or not  
16 Joseph Osenkarski engaged in treatment of Ms.  
17 Varner differently because of her gender?

18 MR. ADAMS: Same objection.

19 MR. THOMAS: For his conclusion?

20 MS. WALLET: Yeah.

21 A. I can't recall. I think what you're asking me is  
22 did I conclude whether Mr. Osenkarski treated her  
23 differently or engaged in sexual harassment  
24 because she was a woman?

25 BY MS. WALLET:

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1 Q. Well, I asked you treated differently.

2 A. I think my report speaks for itself. My  
3 recollection now is only what I see in here and  
4 I'm going to stick by what I said in my report  
5 because that was contemporaneous with the  
6 investigation.

7 Q. So that any of the facts that you would testify to  
8 now have been, shall we say, impaired by the  
9 passage of time?

10 A. Yes.

11 Q. So, you believe the best evidence of what you  
12 concluded at the time is contained in Deposition 2  
13 and 3?

14 A. Yes.

15 MR. THOMAS: With the caveat that he's  
16 already told you earlier in his testimony today  
17 that had he known about a consensual affair, his  
18 research, investigation, conclusions may have been  
19 different.

20 BY MS. WALLET:

21 Q. At the time did you believe that there may be  
22 retaliation against Barbara Varner because of her  
23 complaints?

24 MR. THOMAS: Present tense, past tense,  
25 future tense?

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1 BY MS. WALLET.

2 Q. At the time meaning at the time that you wrote  
3 Deposition 2 and 3.

4 A. My recollection is that my report indicates I had  
5 some concerns about retaliation.

6 Q. Why did you believe there might be some  
7 retaliation against Barbara Varner?

8 A. Because of the information given to me by other  
9 employees that's indicated in my report.

10 Q. The information that people told you Gary Graham  
11 was prone to punish people?

12 MR. THOMAS: Objection to the form. You may  
13 answer.

14 A. I can't recall if that's the exact words, but I  
15 believe there is some language in there that I  
16 quoted from witnesses regarding that topic.

17 BY MS. WALLET:

18 Q. Did you find those witnesses to be credible?

19 MR. THOMAS: Which witnesses?

20 A. Yeah. I guess the witnesses dealing with the  
21 concern of retaliation?

22 BY MS. WALLET:

23 Q. Correct.

24 A. I did at the time.

25 Q. Mr. DeLuce, in your experience did you find it

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1 unusual that the court would ask you to go back to  
2 Gary Graham and Joseph Osenkowski and ask them  
3 what ought to be done in response to Ms. Varner's  
4 complaint?

5 A. When you say did I find it unusual, if you're  
6 asking me is how would I have handled it, that's a  
7 different question. I think that decision of how  
8 to handle it was up to the president judge, not  
9 me. I mean you're asking me to speculate why he  
10 did that and that's what I would be doing. All I  
11 can say is he was the supervisor and I think he  
12 wanted to hear what their suggestions were on how  
13 to resolve it.

14 Q. Had you ever done a sexual discrimination or  
15 sexual harassment investigation prior to this  
16 time?

17 MR. THOMAS: Asked and answered. Don't  
18 answer it.

19 BY MS. WALLET:

20 Q. Have you done any since?

21 A. I have assisted clients and my recollection is  
22 that I did join in with a client's personnel  
23 director on obtaining information.

24 Q. Did you ever share any portions of Deposition  
25 Exhibit 2 with Barbara Varner?

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1 A. I have no recollection of sharing. When you say  
2 portions of it, do you mean the physical report or  
3 the content?

4 Q. The physical report.

5 A. I have no recollection of sharing this report with  
6 Barbara Varner.

7 Q. Do you have any recollection of sharing any  
8 portions of the physical report of Deposition 3  
9 with Barbara Varner?

10 A. I have no recollection of doing that.

11 Q. Did you share any of the portions of these reports  
12 with Gary Graham?

13 A. Again, do you mean the content or the physical  
14 document?

15 Q. Physical document.

16 A. I have no recollection of showing him any of this,  
17 either memorandum.

18 Q. Did you share any of the document or portions of  
19 the document Deposition 2 or Deposition 3 with  
20 Joseph Osenkarski?

21 A. The physical document I have no recollection of  
22 doing that.

23 Q. However, you did share with both of them the  
24 findings, or at least some of the findings and  
25 facts contained in those reports at the direction

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1 of Judge Sheely?

2 MR. THOMAS: Objection to the form.

3 A. We shared with both Mr. Osenkowski and Mr. Graham  
4 statements and allegations, allegations made by  
5 Barbara Varner and statements made by certain  
6 witnesses as to what happened or what they saw to  
7 get his version and confront him with the  
8 allegations.

9 BY MS. WALLET:

10 Q. And you did that at the direction of Judge Sheely?

11 A. The answer is in my view, yes, as part of the  
12 investigation.

13 Q. Did you share any of the facts or information  
14 contained in your report -- let's say reports, I'm  
15 referring now to Deposition 2 and Deposition 3,  
16 with Barbara Varner after you met with Judge  
17 Sheely?

18 A. I can't recall.

19 Q. Did Judge Sheely tell you to go back to Barbara  
20 Varner and ask her what her suggestions were?

21 A. I don't recall him doing that.

22 Q. Did you ever have any discussions with counsel for  
23 Gary Graham in or about the April to June 1997  
24 time frame?

25 A. I recall being contacted by Attorney David Foster.

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1 I recall that he indicated he was representing  
2 Gary Graham. I cannot recall the substance of the  
3 conversations.

4 Q. How did he know to call you?

5 A. I suspect Mr. Graham, but I -- I didn't -- I mean  
6 I didn't contact him.

7 Q. Do you remember what Mr. Foster wanted you to do?

8 A. I don't recall the substance of our conversations.

9 Q. You had no notes of those -- I'm sorry, I didn't  
10 mean to say those.

11 A. My recollection is I have no notes of it and I  
12 don't know if there was one or a couple or how  
13 many, but I do know that he contacted me.

14 Q. Do you know whether Mr. Foster told you any facts  
15 relating to the relationship between Ms. Varner  
16 and Mr. Graham?

17 A. I have no recollection of him discussing facts  
18 with me.

19 Q. Did Mr. Foster at any time tell you that Gary  
20 Graham had had a sexual relationship with Barbara  
21 Varner?

22 A. I don't recall him ever saying that to me. I  
23 think that's something I probably would have  
24 remembered.

25 Q. Did you have any conversations with Debra Wallet

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1 regarding your investigation into the complaints  
2 of Ms. Varner?

3 A. I can't recall. I may have. I can't recall. I  
4 know that we spoke at a certain point in time, but  
5 I cannot tell you when that was.

6 Q. Do you remember any of the substance of the  
7 conversation with Debra Wallet?

8 A. Are you talking April to June of 1997?

9 Q. Or any other time.

10 A. I know that we had discussions regarding how to  
11 resolve or settle the issue or the -- I suspect it  
12 was after the EEOC complaint was filed because I  
13 know that I believe that we had those discussions.  
14 Exact terms, time, I can't recall.

15 Q. Did you initiate those calls or did Debra Wallet?

16 A. I can't recall.

17 Q. During your interviews with the individuals listed  
18 in Deposition 2 and 3, did you give any assurances  
19 to those individuals that what they told you would  
20 be kept confidential?

21 A. I can't recall specifically. I do know that some  
22 of the witnesses had concerns that what they were  
23 telling us would get back to their supervisors.  
24 And Mr. Hartnett and I were conscious of that  
25 issue, but what assurances I gave I cannot recall.



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1 Q. Do you believe that you told anybody that they  
2 could feel free to talk to you because the  
3 information they gave you would not be revealed?

4 A. You are asking me do I believe I said that and you  
5 are asking me to speculate what I may have said  
6 six and a half years ago and I cannot recall what  
7 I said.

8 Q. Did you have any kind of a script that you used  
9 when you began each of the interviews?

10 MR. THOMAS: Objection, asked and answered.  
11 Don't answer it.

12 BY MS. WALLET:

13 Q. Did you have any mental list of what you would  
14 tell each of the individuals that you interviewed?

15 A. Should I answer it?

16 MR. THOMAS: Sure.

17 A. I'm sure that we did have some type of thought  
18 processes as to what we were going to ask the  
19 witnesses when they came to that conference room.

20 BY MS. WALLET:

21 Q. What did you tell these witnesses that you were  
22 there to do?

23 A. I can't specifically recall what I said to them.  
24 The witnesses that Barb asked us to interview and  
25 said they would be willing to talk to us, I'm sure

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1           they knew what was going on. The other witnesses  
2           that we wanted to talk to, I think by the time we  
3           got to them word had spread through the department  
4           and they had a good idea of what the heck was  
5           going on. I can't recall specifically what we  
6           told them.

7    Q.    Did you tell these witnesses that you were  
8           investigating allegations by Barbara Varner  
9           against individuals in the department?

10   A.    I can't recall exactly what I said to them. I  
11           can't recall exactly what I said to them.

12   Q.    Did you give any of the individuals that you  
13           interviewed any assurance that there would be no  
14           retaliation against them as a result of their  
15           talking with you?

16   A.    Didn't you already ask me that? I think I recall  
17           that being a concern, especially with some of the  
18           witnesses who came to see us. And what I would  
19           have explained to them was that if there was any,  
20           they needed to report it, because that should not  
21           be going on. What exactly I said to them I cannot  
22           recall, but I can tell you that's the way I would  
23           have answered their concerns.

24   Q.    Did you tell them who they should report it to?

25   A.    I believe -- no, I don't recall that we did

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1 specifically, but we may have. I can't remember  
2 whether we told them to report it to Mr. Hartnett  
3 or to the judge, but we would have told them to  
4 report it.

5 Q. Was there a sexual harassment policy in place in  
6 or about April through June of 1997?

7 A. I don't have it in front of me, but my  
8 recollection is that there was.

9 Q. Do you know whether that policy was issued by the  
10 County or by the County of Cumberland?

11 MR. THOMAS: Objection to the form. You may  
12 answer.

13 A. I don't know who issued it. I don't know who  
14 issued it. My recollection is that it was part of  
15 the -- I'm not sure. I'm speculating.

16 BY MS. WALLET:

17 Q. Did you have a copy of a written policy at the  
18 time that you began your investigation?

19 A. My recollection is that I asked for it and  
20 something was provided to me.

21 Q. Do you know whether or not that policy was  
22 contained in your file?

23 A. I have to tell you that I don't recall seeing it  
24 in there, but it may be in there.

25 MS. WALLET: Mr. Thomas, I'm going to ask you

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1 to make available to me the entire investigative  
2 file.

3 MR. THOMAS: We will certainly obtain his  
4 original and review it and take your request under  
5 advisement.

6 MS. WALLET: I take it that means there's no  
7 assurance I'm going to get to look at it?

8 MR. THOMAS: That's what that means. I will  
9 review it to see whether or not you've been  
10 provided with the things that we believe are not  
11 protected. If there are things that I believe are  
12 protected, we will provide you with a privilege  
13 log.

14 MS. WALLET: With a privilege?

15 MR. THOMAS: Privilege log.

16 MS. WALLET: Log, thank you. And could I ask  
17 that you do that within a week?

18 MR. THOMAS: Sure.

19 MS. WALLET: Thank you, Mr. DeLuce. That's  
20 all of the questions I have for you today.

21 MR. THOMAS: I would ask that you fax me a  
22 letter today or Monday reminding me to do that so  
23 that it gets done.

24 EXAMINATION

25 BY MR. MacMAIN:

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1 Q. Mr. DeLuce, my name is David MacMain. I represent  
2 Mr. Graham and I had some things that I want to  
3 ask you about that you have been asked about in  
4 follow-up and some additional areas. Now, you had  
5 said earlier that you interviewed some witnesses  
6 that had been suggested to you by Ms. Varner.  
7 Correct?

8 A. Correct.

9 Q. Did you ask Mr. Graham when you interviewed him  
10 for witnesses that he might suggest you interview?

11 A. Yes, I asked him to give me anything he could to  
12 help me in addressing this, especially if he said  
13 the allegations were untrue or false.

14 Q. And do you recall what witnesses, the names of any  
15 of the witnesses that he provided to you to  
16 interview?

17 A. Certainly they are in the report. Whether I said  
18 in here Gary or Joe told me to interview X, I  
19 don't think I did that. He gave me names. I  
20 cannot presently recall who they were.

21 Q. Now, you did not interview everybody in the  
22 probation department. Correct?

23 A. I don't know that. I don't think that we did, but  
24 I don't know that for a fact.

25 Q. Anybody that you would have interviewed would be

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1 contained in your notes which was DeLuce 1.

2 Correct?

3 A. Correct.

4 Q. So, if someone had been interviewed, their name

5 would be reflected in the interview notes

6 somewhere in Number 1?

7 A. That is my recollection.

8 Q. Now, you said you never physically had been in the

9 office, the probation office?

10 A. During the time that this was going on the answer

11 is no. I had been in the probation office prior

12 to that when I did some criminal work. Where

13 their offices are located I have no -- I didn't

14 have any knowledge. I mean I knew they were on

15 the second floor, but that's all I knew.

16 Q. You said these interviews were conducted with both

17 yourself and Mr. Hartnett. Was there any breakout

18 of who asked the questions, for example, did you

19 ask the majority of the questions, did Mr.

20 Hartnett, was it--

21 A. We both asked the questions and I would have

22 viewed it as a team approach. He asked a lot of

23 questions. He was experienced in his field and he

24 asked a lot of questions and I mean he was part of

25 the process. We both did.

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- 1 Q. Do you know if Mr. Hartnett took any notes? We  
2 have your notes here.
- 3 A. You'll have to ask him. I don't have his notes.
- 4 Q. I'm looking at DeLuce 2.
- 5 A. Okay.
- 6 Q. I want to go through some of the documents and ask  
7 you select questions about some things. Second  
8 paragraph about four lines down it says Graham and  
9 Varner shared an office?
- 10 A. Um-hum.
- 11 Q. Do you know whether or not they ever shared an  
12 office? Where did you get that information from I  
13 guess would be a better question?
- 14 A. That came I think from Barbara Varner. I don't  
15 know whether that also came from Gary Graham. But  
16 this looks familiar to me to be part of my first  
17 interview with Barb Varner.
- 18 Q. And was it your understanding that they actually  
19 shared a I don't want to say an office, I mean a  
20 specific office where people sit, as opposed to  
21 the more general probation office generally?
- 22 A. All I know is what I have here is they shared an  
23 office. What type of office or what that meant,  
24 I'm not sure.
- 25 Q. Did she tell you how long they had shared an

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1 office?

2 A. If it's reflected in my notes, then she did.

3 Q. Did you have any understanding of prior to the two  
4 of them working together in probation whether they  
5 worked together while she was located and working  
6 for a different county office, Children and Youth  
7 Services?

8 A. Well, I think what it reflects here and in my  
9 notes that they had some contact in their jobs by  
10 virtue of her being at Children and Youth and him  
11 being in juvenile probation and they worked  
12 together on certain cases. I recall that's how  
13 they had their connection prior to her moving to  
14 the probation department.

15 Q. And it was your understanding that her hiring in  
16 the probation department was actually at the  
17 recommendation of Mr. Graham? I'll cut right to  
18 the chase. I'm looking at DeLuce 2, second  
19 paragraph, it says she was hired as juvenile  
20 probation officer upon the recommendation of Mr.  
21 Graham.

22 A. Yes, I thought that was the case, but I wanted to  
23 find it somewhere.

24 Q. Sure. And was it your understanding that for a  
25 number of years prior to her hire in the probation



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1 department they actually worked together and took  
2 trips together in their respective roles with the  
3 different departments?

4 A. I recall seeing that in my notes.

5 Q. Do you know whether or not Ms. Varner had ever  
6 lodged any complaints against Mr. Graham during  
7 that time period?

8 A. To my knowledge, I have no recollection of her  
9 lodging any such complaints prior to this one.

10 Q. Did you as part of your investigation look at Mr.  
11 Graham's personnel file to see if anybody had ever  
12 made any type of complaints against him during his  
13 tenure with the county?

14 A. My recollection is Mr. Hartnett did that.

15 Q. And would it be fair to say that if there had been  
16 any prior similar complaints against Mr. Graham  
17 that that would be reflected somewhere in your  
18 notes or in your report?

19 A. If that was told to me, it likely would be in this  
20 report.

21 Q. And would it be fair to say the reason it would be  
22 in the report is if there had been prior  
23 complaints that would be of some significance in  
24 your mind as the investigator?

25 A. In my mind I would want to know about it and I

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1 would want to know what the outcome was.

2 Q. And were you aware of whether or not Ms. Varner  
3 had ever made any complaints against any employees  
4 prior to this complaint in 1997?

5 A. I was not aware of her making any complaint of  
6 sexual harassment or discrimination while a county  
7 employee.

8 Q. Now, you were asked by Ms. Wallet whether or not  
9 it was your belief that some employees' opinion  
10 was that there was a hostile environment within  
11 the office and I think you said some employees  
12 believed that there may be. Correct?

13 A. Correct. I think that's reflected in my report.

14 Q. Were there also employees that felt that there was  
15 not a hostile environment?

16 A. Correct, and I think that is reflected in my  
17 report.

18 Q. People had different personal opinions as to the  
19 environment of the office?

20 A. Yes.

21 Q. You were asked by Ms. Wallet whether or not there  
22 was some people you interviewed that expressed  
23 some concern about retaliation. Do you know  
24 whether, in fact, there's been any retaliation  
25 against any employees in the six years since this

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1 investigation took place?

2 A. I am not aware that there has been. It's not been  
3 reported to me.

4 Q. DeLuce 2, if you would put that in front of you, I  
5 just want to ask you about a few references.

6 A. Yes.

7 Q. Turning to Page 12, again, looking at the first  
8 full paragraph, last sentence: "Barb stated many  
9 times to me that she has no romantic interest in  
10 Mr. Graham."

11 A. Yes.

12 Q. Do you recall how many times she told you that  
13 during the interviews?

14 A. No, I'm not -- I mean many times. All I can say  
15 is many times. I know that I asked the question  
16 of both of them and I'm reasonably certain that  
17 Mr. Hartnett did as well. And my recollection  
18 based on what's in the report is both denied  
19 anything.

20 Q. But this statement many times she denied a  
21 romantic interest, do you have any estimate of how  
22 many times she denied any type of a romantic  
23 interest?

24 A. I cannot give you a count.

25 Q. Did you find it unusual that it would be repeated

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1 many times to you that she has no interest?

2 A. I don't know about unusual. I do recall that card  
3 that she claimed that he gave to her and my  
4 recollection is that Mr. Graham denied giving it  
5 to her. I can't quantify many times.

6 Q. Page 13 of the report, looking at the next to last  
7 full paragraph, the last line. Let's go to my  
8 question before about the concern about  
9 retaliation, you have written: "Barb has not  
10 relayed any facts where retaliation has occurred  
11 since Brandt met with me." Why did you put this  
12 line in, what was the significance of this?

13 A. Because I think it follows with the lead-in of  
14 that paragraph about the reaction of Mr. Brandt  
15 after he returned from meeting with myself and Mr.  
16 Hartnett and this is what Barb told us. And that  
17 gets into a whole other story about a previous  
18 incident that he was the key witness where someone  
19 else lodged a complaint of sexual harassment, and  
20 I think if you look at my notes what Mr. Brandt  
21 said his work conditions were for the previous  
22 four years and he did not want any part of this.

23 Q. Does that statement also relay there's been no  
24 retaliation against Barb since the investigation  
25 began?

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- 1 A. You are asking me whether I'm saying Barb is  
2 stating that there's been no retaliation against  
3 her or no retaliation against Brandt?
- 4 Q. Right.
- 5 A. Both?
- 6 Q. Both. You've already answered as to Mr. Brandt.  
7 There was no retaliation as to Mr. Brandt based on  
8 his interview.
- 9 A. I didn't clearly word that, but I think I am only  
10 referring to Mr. Brandt. I'm not referring to  
11 Barb.
- 12 Q. The next paragraph refers to an interview with a  
13 Jennifer Crum, a secretary?
- 14 A. Um-hum.
- 15 Q. Did you interview any other secretaries in the  
16 office who may have observed or not observed the  
17 environment in the office at the time?
- 18 A. My recollection is we interviewed another person  
19 who was not a probation officer, but my  
20 recollection is she was from witness assistance or  
21 something like that. I think it's reflected in  
22 the report. I think I tried to designate the  
23 employment of the person who we interviewed.
- 24 Q. Would that be Deborah Reitzel?
- 25 A. What page is that on?

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1 Q. If you turn to DeLuce 1, which are your notes,  
2 Page 10 of 37.

3 A. Yes.

4 Q. And Deborah Reitzel relayed to you at the bottom  
5 she never felt uneasy or uncomfortable with Gary  
6 Graham. It's the very last line, I'm sorry.

7 A. That's my handwriting.

8 Q. So, according to Ms. Reitzel, there was no hostile  
9 environment that she observed in the office?

10 A. I think what she is saying is towards her.

11 Q. Did you ask her whether or not there was any  
12 hostile environment towards Ms. Varner?

13 A. I believe we asked her about the incident several  
14 weeks ago at the probation office.

15 Q. The reason I ask, there's nothing reflected in  
16 here that Ms. Reitzel said there was any type of  
17 hostile environment towards either her or Ms.  
18 Varner. I assume if she did, it would be in your  
19 notes?

20 A. I think she said that she didn't feel uneasy and I  
21 think she says earlier Barbara Varner was not in  
22 the group at the counter at the time.

23 MR. THOMAS: Can we take a break for a  
24 minute?

25 MR. MacMAIN: Sure.

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1 (Recess taken)

2 BY MR. MacMAIN:

3 Q. Mr. DeLuce, in your report in DeLuce 2, and flip  
4 that over to Page 6, in there you list a number of  
5 people that were interviewed and the last line  
6 there's a Hank Thielemann who you note was  
7 interviewed?

8 A. Yes.

9 Q. I didn't see any reference to him in your  
10 interview notes, nor did I see his name mentioned  
11 in your report. Do you recall as you sit here  
12 whether or not he, in fact, was interviewed?

13 A. Mr. Thielemann was interviewed. I know Mr.  
14 Thielemann because I believe when I did criminal  
15 work he was a probation officer of a client of  
16 mine. And I thought I saw reference to Mr.  
17 Thielemann. Yeah, here he is. On Page 21 there's  
18 reference to Mr. Thielemann and I thought I saw  
19 file notes with reference to an HT, which would  
20 have been Hank Thielemann. He was one of I think  
21 the two probation officers that I knew. So, I  
22 know Hank and I know I spoke to him.

23 Q. You believe that's reflected in your notes which  
24 is DeLuce 1?

25 A. Well, I'm looking in there now to see if I can

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1 find it. I'm certain I spoke to him. I'm not  
2 seeing notes, but--

3 Q. The only reason I ask you is Page 33 of 37 his  
4 initials are in the left-hand margin and it looks  
5 like it's part of an interview with Deborah Green  
6 on Page 33 of 37.

7 A. Yeah, I see down about three quarters of the way  
8 down?

9 Q. Right.

10 A. Well, it says other guys. I assume it's Sam  
11 Miller, Denny Drachbar and Hank Thielemann not  
12 busy is what she's claiming. There was an  
13 allegation here that Barbara Varner got a higher  
14 case load than anybody else.

15 Q. And that was one of the examples given to you by  
16 some witnesses as evidence that she was treated  
17 unfairly?

18 A. Yes.

19 Q. And further that was claimed to be evidenced by  
20 some of the witnesses that the group of more  
21 senior employees in the department got a lighter  
22 case load?

23 A. Yes.

24 Q. Did you do any investigation to see if, in fact,  
25 that was true?



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1 A. Yes.

2 Q. And was it, in fact, true?

3 A. My recollection is I stated something I thought in  
4 the report because I saw that. The answer was the  
5 highest cases were with Barbara Varner and I  
6 forget after that. We got a list. We made Mr.  
7 Graham and Mr. Osenkowski produce a list and we  
8 went down the list. And I know that we discussed  
9 that throughout this process and I thought I  
10 reviewed something on that.

11 Q. Yeah, if you turn to Page 17 of your report.

12 MS. WALLET: Which one?

13 MR. MacMAIN: Of DeLuce 2.

14 A. There we go. Yes, there's a reference in the  
15 first full paragraph.

16 Q. Okay.

17 A. I knew we got statistics.

18 MR. MacMAIN: Let's mark this as DeLuce 5 I  
19 guess we're up to.

20 (DeLuce Deposition Exhibit #5 marked for  
21 identification)

22 BY MR. MacMAIN:

23 Q. On Page 17 of DeLuce 2, the draft or earlier  
24 version of your report, it refers to a memo,  
25 statistics provided April 29th, '97, from

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1 Osenkarski. If you turn to the first page, this  
2 appears to be a cover memo from Joe Osenkarski,  
3 April 30th. Attached is a list of cases, dated  
4 April 29th, 1997. Do you see that?

5 A. Um-hum.

6 Q. Is this the memo that was provided to you?

7 A. I don't know. I don't know. This is addressed to  
8 Dan, I assume that's Dan Hartnett, April 30th. I  
9 don't know if this is what was given to us or not.  
10 I can't answer that.

11 Q. If you turn to the second page that has the case  
12 list on it, you recite in your report that Barb  
13 has the most cases with 45?

14 A. Um-hum.

15 Q. If you look at the last column and add in the  
16 number total and pending, that adds up to 44 which  
17 is almost exactly the number that's cited?

18 MR. THOMAS: Objection. The number is 45 I  
19 think.

20 A. 31 and 14 is 45.

21 BY MR. MacMAIN:

22 Q. And then the next number that's given is Drachbar  
23 with 43?

24 A. Um-hum.

25 Q. If you add up the last two columns next to his

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- 1 name, 35 and 8, that equals 43?
- 2 A. Okay. I see what you're doing.
- 3 Q. Does this refresh your recollection as to whether
- 4 or not this was the chart you were given and you
- 5 referenced in your report?
- 6 A. Obviously the numbers seem to match what's in my
- 7 report. And I know I saw some type of a report
- 8 like this. Whether this is the same exact one, I
- 9 don't know for sure.
- 10 Q. And at least according to this report, Mr.
- 11 Drachbar has only one less case than Ms. Varner,
- 12 correct, he has 43, Ms. Varner has 44?
- 13 A. He has 43, Ms. Varner has 45.
- 14 Q. Okay, 45, I'm sorry.
- 15 A. Yes.
- 16 Q. And Hank Thielemann has 40 cases?
- 17 A. Yes.
- 18 Q. And Ms. Green who complained that Ms. Varner and
- 19 she and other people were disfavored actually got
- 20 more cases, she only has 31 cases. Correct?
- 21 A. Um-hum.
- 22 Q. Would this document refute or undercut Ms. Green's
- 23 contention that the one element to prove that
- 24 there was discrimination was that the case loads
- 25 were higher for her and other people and the older

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1 males had lower case loads?

2 A. I think you need to ask her that. I see Mr.  
3 Osenkowski's memo and he said when assignments  
4 were made it is not simply a numbers game. Other  
5 factors such as complexity of cases and current  
6 individual PO's daily activities are taken into  
7 consideration. So, I don't know if it refutes  
8 what she said. I do know that shear numbers alone  
9 are not the only answer.

10 Q. But Ms. Green in the paragraph you recite she  
11 believes that Barb and Nick Baralett have the  
12 highest case loads because Gary wants to make a  
13 point with them, that would not be reflected in  
14 this document, would it, that they did not have  
15 the highest -- well, Ms. Varner had the highest  
16 case load by a case or two?

17 A. She had the highest case load, that was clear.  
18 She felt whatever it says there. Obviously the  
19 numbers panned it out differently and I reflected  
20 that accurately in the report.

21 Q. Did that have any effect on your credibility of  
22 placing what Ms. Green had told you?

23 A. Well, it didn't have a significant impact, no,  
24 because the concern I had was that Barbara Varner  
25 had the most cases and some of the other things

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1           that Deb Green relayed my -- well, whatever my  
2           report says Deb Green said says. I don't want to  
3           restate that because it's six and a half years.

4    Q.     Sure.

5    A.     I mean there's no question what I wrote in my  
6           notes is what she said to me. You are saying,  
7           hey, the numbers don't pan out. I'll let you ask  
8           her that.

9    Q.     If you turn to Page 20 and, again, we're on DeLuce  
10           2, this reflects an interview with a Kerry Howser.  
11           She clearly does not like Osenkarski and Graham.  
12           I want to go through a couple of the examples Ms.  
13           Howser gave to support her belief that there was  
14           mistreatment or differential treatment. She first  
15           tells you that DUI instructors got \$20,000 extra.  
16           Is that correct?

17   A.     That's what I put in the report.

18   Q.     But then the actual amounts are actually one  
19           quarter or one half of that. Correct?

20   A.     That's what we asked, what do they make, and I  
21           wanted to correctly reflect that.

22   Q.     Based on looking at the numbers, did that have an  
23           impact on your assessment of Ms. Howser's  
24           credibility?

25   A.     No, because I don't think they, the individual

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1 employees knew how much was made by the DUI  
2 instructors. I think they thought it was a lot  
3 more money than it actually was. The bigger  
4 concern was that a lot of these employees didn't  
5 get a crack at this additional income. And that  
6 was the issue is how were people selected to get  
7 this opportunity. And I don't think I came to any  
8 significant conclusions, but I tried to bear out  
9 the facts to address the situation.

10 Q. And the facts were that Ms. Howser's perception  
11 was incorrect?

12 A. I think her perception of the amount was  
13 incorrect. Her concern as to why certain people  
14 got it and why certain people didn't was an issue  
15 that needed further investigation.

16 Q. Was that something that you investigated?

17 A. I asked questions about it.

18 Q. And did you do any further investigation beyond  
19 asking questions?

20 A. No.

21 Q. In other words, did you look at documents?

22 A. No. Well, somebody looked at documents because  
23 they got us the actual amounts they made. I  
24 believe Mr. Hartnett looked into that.

25 Q. And the actual amounts were one quarter or one

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1 half of what Ms. Howser believed them to be?

2 MS. WALLET: I'll raise an objection. Asked  
3 and answered.

4 BY MR. MacMAIN:

5 Q. Is that correct, the numbers reflect one quarter  
6 or one half of what Ms. Howser's perception was?

7 A. Based on the math, yes.

8 Q. Turning to Page 21, looking at the last paragraph,  
9 and Ms. Howser likewise cites as an example of  
10 unfair treatment that Mr. Thielemann's case load  
11 is very low. I'm looking at the third line from  
12 the bottom. Do you see where I am?

13 A. Um-hum.

14 Q. If we turn back to DeLuce 5, which is the case  
15 load assignment, Mr. Thielemann, in fact, has one  
16 of the highest case loads. If my math is correct,  
17 he has 40 cases?

18 A. I think I explained that these notes are these --  
19 this report contains my summary of what the  
20 witnesses told me.

21 Q. Sure.

22 A. It's not -- I didn't make findings of fact that a  
23 court would do.

24 Q. Sure. All I'm simply asking is what you were told  
25 by a witness when you looked at the numbers, in

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1 fact, were inaccurate, the witness's either  
2 perception was inaccurate -- I mean you can't  
3 comment on their state of mind, but what the  
4 numbers bear out and what they told you are two  
5 different things. Correct?

6 A. Yeah, in certain cases.

7 MR. MacMAIN: Does anyone else have any other  
8 questions? I think I have a few select questions  
9 from your notes, but I don't want you to have to  
10 sit here for three minutes.

11 (Discussion held off the record)

12 BY MR. MacMAIN:

13 Q. Mr. DeLuce, let me ask you this. One of the other  
14 things that you were told and I think is reflected  
15 in your notes and in your report is that the  
16 department had split a short time before all of  
17 this occurred. Correct?

18 A. Yes.

19 Q. And was it your understanding that there was some  
20 unhappiness generally because of the split?

21 A. I think whatever my report says, my recollection  
22 is that some were probably happy and some were  
23 probably unhappy, but I think I explained that  
24 some people did not want to work for certain  
25 people and went to great lengths to get away from



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1           them.

2       Q.     DeLuce 1, which are your notes, looking on Page 14  
3           of the 37, and this is notes from your interview  
4           with Mark Galbreath?

5       A.     Yes.

6       Q.     Five lines down you note that "worked closely with  
7           Barb Varner." That reflects I assume that Mr.  
8           Galbreath worked closely with Barb Varner?

9       A.     If that's what I wrote, I must have gotten that  
10          indication.

11      Q.     Did Mr. Galbreath indicate that Ms. Varner ever  
12          complained to him about Mr. Graham's conduct?

13      A.     You are asking me if Mark Galbreath told me that  
14          Barb Varner ever complained to Mark Galbreath  
15          about Gary Graham's conduct?

16      Q.     Correct.

17      A.     And I will answer that by saying if I state it in  
18          this summary, my answer is yes. If it's not in  
19          there, my answer is no.

20      Q.     Fair enough.

21      A.     I can't remember what Mark Galbreath told me six  
22          and a half years ago.

23      Q.     I'll represent to you there's no indication in  
24          your notes that he stated that Ms. Varner  
25          complained to him at any point about Mr. Graham.

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1           So, what you're telling me, if it's not in there,  
2           he didn't tell you that.

3                   If you turn to Page 30 of the same document,  
4           30 of 37, and looking at the very top of the page  
5           there's two names written, Fran Rose and Winnie  
6           Stern?

7   A.     Um-hum.

8   Q.     These were names provided to you by the person you  
9           were interviewing, would that be fair?

10  A.     I don't know. I presume Kerry Howser gave me  
11           these names because this seems to be part of the  
12           Kerry Howser interview.

13  Q.     And did you ever interview Fran Rose or Winnie  
14           Stern?

15  A.     I have no recollection of interviewing those two  
16           individuals.

17  Q.     Did you ever interview Tom Boyer?

18  A.     My recollection is that we did. Because, again, I  
19           know Tom because I believe Tom handled DUIs and,  
20           therefore, I had some DUI cases. But are you  
21           telling me I have no notes in here from Tom Boyer?

22  Q.     I did not see any.

23  A.     Well, I -- I'm not going to speculate. You're  
24           asking me did we ever interview Tom Boyer? I  
25           can't recall specifically.

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1 Q. I don't want to ask a question that's already been  
2 asked, but if you would have interviewed Mr.  
3 Boyer, there would be notes reflected in this  
4 package of materials. Would that be fair?

5 A. Fair statement is there should be. Okay? I  
6 turned the entire -- I believe if I interviewed  
7 him and took notes, they exist. And maybe because  
8 I knew Tom I thought that I had. I can't explain  
9 the difference.

10 Q. If you turn to Page 21 of 24, same document you  
11 have in front of you.

12 A. Okay.

13 Q. This is Page 2 of your interview with John Roller?

14 A. Yes.

15 Q. Very last line says GG - "Attila the Hun",  
16 different managerial style, can get the work done.  
17 This came from Mr. Roller obviously. Do you  
18 recall anymore specifically what he told you?

19 A. He told me that Mr. Graham's nickname in the  
20 courthouse was the Attila the Hun, but he has a  
21 different managerial style and he can get work  
22 done. He said though, as I recall, it was not his  
23 style.

24 Q. What was not his style?

25 A. Mr. Graham's style.

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1 Q. Was the not the same as Mr. Roller's style?

2 A. Yes.

3 Q. The reference about can get the work done would  
4 indicate that Mr. Graham was able to effectively  
5 complete jobs and get the work done?

6 A. I think that was Mr. Roller's opinion.

7 Q. Just in a different style than what Mr. Roller  
8 would do?

9 A. I think you need to ask him that, but that -- I  
10 think you need to ask him that.

11 MR. MacMAIN: That's all of the questions I  
12 have. Thank you.

13 EXAMINATION

14 BY MR. ADAMS:

15 Q. Mr. DeLuce, you testified at some point today that  
16 when you were interviewing witnesses for your  
17 report that you took complaints from Ms. Varner  
18 and you used them as input to ask questions to  
19 witnesses. Do you recall that?

20 A. Yes.

21 Q. Can you give me an example of that by chance?

22 A. I think if you look at my notes of my meeting with  
23 Barbara Varner, which is contained in this  
24 packet--

25 Q. Are you referring to your handwritten notes?

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1 A. Yes.

2 Q. The one set of them?

3 A. Yes.

4 Q. Let me raise the question, did you ask the  
5 witnesses that Ms. Varner provided to you what  
6 they observed or did you ask them specifics based  
7 on what Ms. Varner told you?

8 A. I think it was twofold. I think we asked them  
9 specifically about specific incidents that Ms.  
10 Varner told us and then we would ask them some  
11 general terms about what they observed regarding  
12 the attitude, behavior in the office environment  
13 towards other employees, whether they be males or  
14 females.

15 Q. In terms of the sexual harassment that Ms. Varner  
16 was alleging, did you ask witnesses that she  
17 provided specific questions in that area, for  
18 example, did you see Ms. Varner subjected to blank  
19 in the sexual harassment area?

20 A. I can't recall exact questions that were asked. I  
21 tried to reflect in my notes the answers that were  
22 given.

23 Q. Not to belabor this any longer, can you look at  
24 Page 9 on Deposition I guess it's Number 2?

25 MR. THOMAS: The typewritten report.

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1 MR. ADAMS: Right.

2 BY MR. ADAMS:

3 Q. This is an example. I don't want to go through  
4 all of this, but I just want to ask you one for  
5 example. The last paragraph -- well, the first  
6 real paragraph, the paragraph at the bottom starts  
7 with Varner. It says: "Varner states that Graham  
8 frequently screams at her while she is at her desk  
9 and in her office, or uses foul language  
10 describing her working abilities in the general  
11 office area."

12 If you go down a couple of lines, he also  
13 indicates that the ranting and raving and putting  
14 her down was confirmed by Deborah Green, and I'm  
15 not reading the complete sentence, but would that  
16 be an example of when you talked to Deborah Green  
17 that you asked Deborah Green did she see Mr.  
18 Graham do these things, blah, blah, blah, based on  
19 what Varner described?

20 A. Yes, that's what we would do. And the ranting and  
21 raving comments were I'm certain relayed to me by  
22 Barbara Varner and then we asked witnesses if they  
23 witnessed that and what they saw towards her and  
24 others. I'm reasonably certain that was the  
25 context of the type of questioning.

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1 Q. Okay, thank you, sir. Did you ever discover facts  
2 by talking to any of the witnesses that Ms. Varner  
3 complained to Joe Osenkarski regarding the sexual  
4 harassment by Gary Graham?

5 A. Did I ever discover facts that Ms. Varner  
6 complained to Joe Osenkarski regarding the actions  
7 by Gary Graham?

8 Q. Or the sexual harassment allegations by Gary  
9 Graham.

10 A. I think there is some reference in here. I don't  
11 want to speculate, but I thought there was some  
12 reference in here that Mrs. Varner indicated that  
13 she said something to Joe about it and got  
14 nowhere, but -- well, I don't want to speculate.  
15 If I say it in here, she told me; if I didn't say  
16 it in here, she didn't tell me.

17 Q. Okay.

18 A. I hate to go beyond the four corners of this  
19 document since it's six and a half years ago.

20 Q. I'll submit to you that I haven't seen it, but you  
21 have no evidence to the contrary, do you, off the  
22 top of your head?

23 MR. THOMAS: Let me make an observation for  
24 the record. I'm not sure that the answer was  
25 responsive to the question. I thought your

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1 question was did anybody else confirm that Varner  
2 complained to Osenkowski and I think the witness  
3 responded by noting that Varner complained to  
4 Osenkowski.

5 A. I misinterpreted the question. I think the answer  
6 is no to your question.

7 BY MR. ADAMS:

8 Q. That no other person--

9 A. --confirmed that they heard Barbara Varner  
10 complain about Gary Graham to Joe Osenkowski.

11 Q. Is that the same in terms of anyone coming forth  
12 and claiming that Ms. Varner complained to Mr.  
13 Osenkowski about different treatment for women  
14 versus men in the office?

15 A. I'm sorry, you're asking me if anyone else  
16 complained about different treatment towards women  
17 in the office?

18 Q. Or confirmed Ms. Varner's allegations that Mr.  
19 Osenkowski was notified of such or complained to  
20 Mr. Osenkowski about such things?

21 A. No one told me that anyone else complained to Mr.  
22 Osenkowski about the treatment of women in the  
23 office.

24 Q. Did anyone tell you that Ms. Varner complained to  
25 Mr. Osenkowski about the seniority system and how



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1 it affected her in the office?

2 A. I can't recall that. I know that Ms. Varner  
3 complained about it. Whether someone else did, I  
4 can't recall.

5 Q. If you could turn to Page 22, the first paragraph  
6 there which if you go from the bottom of the  
7 paragraph up, if you look in the left-hand column  
8 side the sentence that starts with Osenkarski, do  
9 you see that?

10 A. Yes.

11 Q. It reads Osenkarski can only remember Barb coming  
12 to him once to discuss a case and that was when  
13 her and Gary disagreed, and you have in  
14 parentheses, the Trinity basketball player, I  
15 guess in regard to a case involving a trendy  
16 basketball player. Is that correct?

17 A. That's correct.

18 Q. Did Gary Graham confirm this example of Ms. Varner  
19 going to Mr. Osenkarski and complain only of this  
20 particular case versus something else?

21 MS. WALLET: Objection. That's clearly a  
22 compound question.

23 A. I'm sorry, what are you asking?

24 BY MR. ADAMS:

25 Q. Let me rephrase the question. Did you discover

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1 any evidence to the contrary that Ms. Varner went  
2 to Mr. Osenkowski to complain about anything else  
3 with regard to Gary Graham other than this  
4 particular case involving the trendy basketball  
5 player?

6 A. I can't recall. If I have it in my notes or it's  
7 in this report, she did.

8 Q. Okay.

9 A. If I don't, I can't recall any other additional  
10 complaints.

11 Q. Did you, in fact, take into consideration that you  
12 didn't have any evidence other than what Ms.  
13 Varner shared with you that any notice or  
14 complaints were given to Mr. Osenkowski with  
15 regarding her treatment in your recommendation  
16 that you finally gave to the commissioners and Mr.  
17 Hartnett?

18 A. Could you repeat the question?

19 (Question from Page 138, Lines 11 through 17,  
20 read by the Reporter)

21 A. I'm sorry, I don't understand the question.

22 BY MR. ADAMS:

23 Q. I think you testified that you gave some  
24 recommendations about Gary Graham and Mr.  
25 Osenkowski to the commissioners, and I can't

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1 remember who else was involved, but certainly  
2 commissioners heard your recommendations as to  
3 what you thought should be done with regards to  
4 the office of juvenile probation. Is that  
5 correct?

6 MR. THOMAS: Objection to form. I think it  
7 mischaracterizes his earlier testimony, but you  
8 may answer it.

9 A. I had a meeting with the commissioners, John Ward,  
10 Dan Hartnett, Horace Johnson, where I verbally as  
11 well as Mr. Hartnett gave information regarding  
12 our investigation and then I gave the  
13 commissioners options that could be considered and  
14 some thoughts and recommendations in my mind that  
15 I thought would help resolve the complaint and  
16 improve the department and the employment issues,  
17 management issues that were going on.

18 BY MR. ADAMS:

19 Q. Did you take into consideration when you made that  
20 recommendation that other than what Ms. Varner  
21 shared with you there was no other evidence that  
22 indicated that she complained to Mr. Osenkowski  
23 about her seniority issue, sexual harassment or  
24 anything else?

25 A. My recollection is that she complained to Mr.

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1 Osenkarski about a couple of issues. My  
2 recollection is she was dissatisfied with the  
3 response or lack of response or the fact that a  
4 decision had to be made by the president judge and  
5 none were forthcoming.

6 Q. Can you turn to Page 6 of Deposition 2, under  
7 facts there, that paragraph, I don't know, maybe  
8 four lines down it reads: "I also spoke with  
9 senior probation officer, Kerry Howser, who in  
10 1993 filed a complaint of sexual harassment based  
11 on a comment made about her by Mr. Osenkarski."  
12 You also indicate that it says: "He was  
13 reprimanded informally and required to apologize  
14 to her and engage in some type of sensitivity  
15 training." Did you write that?

16 A. I wrote that.

17 Q. Did you also in your investigation learn that that  
18 particular allegation of sexual harassment was  
19 unfounded?

20 A. I don't recall that. I got to believe -- well,  
21 strike that. Leave it at that. I don't recall  
22 that.

23 Q. Can you turn over to Page 7? That first real  
24 paragraph there discusses the seniority system and  
25 Ms. Varner's complaint about it, would you agree?

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1 Please take your time to look at the paragraph so

2 I can ask you a question or two.

3 A. This is the seniority list.

4 Q. Okay.

5 A. Yes.

6 Q. And I think you testified that Ms. Varner  
7 complained that she felt that the seniority in the  
8 system was unfair. Is that correct?

9 A. I think she felt it was discriminatory.

10 Q. Did she share with you that prior to the  
11 implementation of the seniority policy that she  
12 thought changing it from applying full county time  
13 to priority time of probation officers being more  
14 paramount, she actually thought that was fair  
15 before it actually was applied. Did she share  
16 that with you?

17 A. I don't recall. I'm sorry, did she share what  
18 with me? That she felt that her time in Children  
19 and Youth should be included in determining  
20 seniority?

21 Q. No. Did she share with you that prior to the  
22 seniority list being implemented which led to her  
23 losing ground by one notch that she thought that  
24 the change was a fair one for everyone, did she  
25 share that with you?

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1 A. I have no recollection of that.

2 Q. What is your opinion of the environment in the  
3 juvenile probation department when you were  
4 investigating this, did you have an opinion of it  
5 at all as a whole?

6 MR. THOMAS: Objection to the form.

7 MR. ADAMS: That's okay.

8 MR. THOMAS: Well--

9 MR. ADAMS: I'll rephrase it.

10 MR. THOMAS: Okay.

11 BY MR. ADAMS:

12 Q. Mr. DeLuce, did you ever receive any information  
13 that led you to believe that the environment in  
14 the juvenile probation department was one of light  
15 humor, jokes in the office?

16 A. I did not get that feeling from some of the  
17 employees and yet from other employees I think it  
18 was a comfortable environment for them. For some  
19 I felt it was an uncomfortable environment.

20 Q. Would the information received on both sides,  
21 would that include from women and men the same  
22 opinions?

23 A. I think initially I felt from what the witnesses  
24 said that the women felt they were treated  
25 differently. As we went through talking to more

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1 people, they confirmed that they felt some of the  
2 women were treated differently but some of the men  
3 were too. I think that's why my recommendations  
4 were changing somewhat from a harassment issue to  
5 include an issue regarding management.

6 Q. Would those thoughts that you gravitated to  
7 include the language that was shared in the office  
8 among employees, men and women?

9 MS. WALLET: Objection to the form of the  
10 question.

11 A. I think it was clear that some of the employees  
12 were uncomfortable with the language and some of  
13 them probably were not.

14 BY MR. ADAMS:

15 Q. Would that include women and men? Strike that, if  
16 I can strike it.

17 A. Certainly some of the women--

18 MR. THOMAS: There's no question.

19 A. Okay.

20 BY MR. ADAMS:

21 Q. One last set of questions, Mr. DeLuce. You  
22 testified that you were with the understanding  
23 that it was the president judge who made the  
24 ultimate decision with regard to Mr. Graham and  
25 Mr. Osenkowski. Is that correct?

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1 A. That's correct.

2 Q. And you were aware that the president judge  
3 actually received a copy of your report, that  
4 being the confidential attorney impressions  
5 report?

6 A. I am not personally aware that he received it. I  
7 don't know for sure what the president judge  
8 received. I have seen in Judge Kane's I think  
9 opinion reference to the fact that it was  
10 disclosed to the president judge. I didn't  
11 deliver it to him. I didn't sit down with the  
12 report and discuss it with him.

13 Q. But you are aware that the president judge decided  
14 not to terminate Mr. Osenkowski's employment as a  
15 result of Ms. Varner's complaints--

16 A. Oh, yes.

17 Q. --and the investigation. Is that correct?

18 A. I'm aware that he decided not to take -- my  
19 recollection is he decided not to take any  
20 employment action against Mr. Osenkowski. I'm not  
21 aware of any being taken. If there is, I didn't  
22 see it.

23 MR. ADAMS: That's my last two questions.

24 Thank you.

25 A. We're done?



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1 MS. WILLIAMS: I have no questions for you,

2 Mr. DeLuce.

3 (The deposition concluded at 3:55 p.m.)

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2 COMMONWEALTH OF PENNSYLVANIA )  
3 ) ss.  
4 COUNTY OF CUMBERLAND )  
5

6 I, Ann M. Wetmore, Reporter and Notary Public  
7 in and for the Commonwealth of Pennsylvania and  
8 County of Cumberland, do hereby certify that the  
9 foregoing deposition was taken before me at the  
10 time and place hereinbefore set forth, and that it  
11 is the testimony of:  
12

13  
14 DAVID W. DeLUCE  
15

16 I further certify that said witness was by me  
17 duly sworn to testify the whole and complete truth  
18 in said cause; that the testimony then given was  
19 reported by me stenographically, and subsequently  
20 transcribed under my direction and supervision;  
21 and that the foregoing is a full, true and correct  
22 transcript of my original shorthand notes.  
23

24 I further certify that I am not counsel for  
25 or related to any of the parties to the foregoing  
cause, or employed by them or their attorneys, and  
am not interested in the subject matter or outcome  
thereof.

26 Dated at Mechanicsburg, Pennsylvania, this  
27 27th day of October, 2003.

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Ann M. Wetmore  
Reporter - Notary Public

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